

OFFICIAL CODE OF GEORGIA ANNOTATED

2012 Supplement

Including Acts of the 2012 Regular Session of the General Assembly

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

Volume 14B 2011 Edition

Title 16. Crimes and Offenses (Chapters 12—17)

Including Annotations to the Georgia Reports
and the Georgia Appeals Reports

Place in Pocket of Corresponding Volume of Main Set

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Charlottesville, Virginia**

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ISBN 978-0-327-11074-3 (set)
ISBN 978-1-4224-8300-8

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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2012 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 30, 2012.

Other Annotations:

References to:

- Emory Bankruptcy Developments Journal.
- Emory International Law Review.
- Emory Law Journal.
- Georgia Journal of International and Comparative Law.
- Georgia Law Review.
- Georgia State University Law Review.
- Mercer Law Review.
- Georgia State Bar Journal.
- Georgia Journal of Intellectual Property Law.
- American Jurisprudence, Second Edition.
- American Jurisprudence, Pleading and Practice.
- American Jurisprudence, Proof of Facts.
- American Jurisprudence, Trials.
- Corpus Juris Secundum.
- Uniform Laws Annotated.
- American Law Reports, First through Sixth Series.
- American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2012 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2012 supplement pamphlets and in the bound volumes of the Code.

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TITLE 16

CRIMES AND OFFENSES

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5. Crimes Against the Person, 16-5-1 through 16-5-110.

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CHAPTER 12

OFFENSES AGAINST PUBLIC HEALTH AND MORALS

Article 2

Gambling and Related Offenses

PART 1

GAMBLING

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16-12-20. Definitions.	16-12-140. (For effective date, see note) Criminal abortion.
16-12-38. Pyramid promotional schemes; exceptions; penalties.	16-12-141. (For effective date, see note) Restrictions on the performance of abortions; availability of records.

Article 5

Abortion

ARTICLE 1

GENERAL PROVISIONS

16-12-1. Contributing to the delinquency, unruliness, or deprivation of a minor.

JUDICIAL DECISIONS

Accusation insufficient as to date of offense. — Accusation that alleged contributing to the delinquency of a minor and electronically furnishing obscene material to a minor within a two and a half month time frame was subject to a demurser because the state gave no explanation as to why an investigating officer was unable to ascertain the dates of the offenses from the victim's computer. *State v. Meeks*, 309 Ga. App. 855, 711 S.E.2d 403 (2011).

Evidence held sufficient for conviction.

Evidence that a minor was in a park with the defendant, that the minor registered positive on an alcensor, that the minor was observed reaching into a bag containing beer as the minor sat on a park bench, that the defendant's breath smelled of alcohol, and that the defendant observed the minor drinking beer in the park, was sufficient to allow the conclusion that the defendant had at least conspired in the minor's possession and consumption of alcohol. *Boyd v. State*, No. A11A1614, 2012 Ga. App. LEXIS 298 (Mar. 19, 2012).

Sentence appropriate.

Defendant failed to demonstrate that

the defendant's sentence of ten years for cruelty to children in the second degree, O.C.G.A. § 16-5-70(c), and contributing to the deprivation of a minor, O.C.G.A. § 16-12-1(b)(3), were unlawful because the trial court found that the defendant's defense was based upon lies and asserted in bad faith; the sentences were within the statutory limits for each of the crimes for which the defendant was convicted pursuant to O.C.G.A. §§ 16-5-70(e)(2) and 16-12-1(b). *Staib v. State*, 309 Ga. App. 785, 711 S.E.2d 362 (2011).

Deprivation of a minor conviction did not merge with cruelty to children conviction. — Trial court did not err in failing to merge the defendant's misdemeanor convictions for contributing to the deprivation of a minor, O.C.G.A. § 16-12-1(b)(3), with the defendant's corresponding felony convictions for cruelty to children in the second degree, O.C.G.A. § 16-5-70(c), pursuant to the "required evidence" test, the offenses did not merge as a matter of law. The offenses of cruelty to children in the second degree and contributing to the deprivation of a minor each have at least one essential element that the other does not: causing the child

cruel or excessive physical or mental pain and wilfully failing to provide the child with the proper care necessary for his or her health, respectively. *Staib v. State*, 309 Ga. App. 785, 711 S.E.2d 362 (2011).

Rule of lenity did not apply to multiple convictions.

Trial court did not err in failing to apply the rule of lenity and sentencing the defendant for the misdemeanor convictions of contributing to the deprivation of a minor, O.C.G.A. § 16-12-1(b)(3), instead

of for the felony charges of cruelty to children, O.C.G.A. § 16-5-70(c), because the rule of lenity did not apply since different facts were required to prove cruelty to children and contributing to the deprivation of a minor; the defendant's conviction for contributing to the deprivation of a minor required proof that the defendant failed to provide the children with the proper care necessary for the children's health. *Staib v. State*, 309 Ga. App. 785, 711 S.E.2d 362 (2011).

16-12-4. Cruelty to animals.

JUDICIAL DECISIONS

Jury instructions. — There was no plain error in the trial court's charge to the jury that no criminal liability would attach if the defendant killed a neighbor's dog in order to protect livestock because the trial court's charge on animal cruelty, as a whole, was consistent with the language of O.C.G.A. § 16-12-4, and it adequately explained to the jury that a person was not prohibited from killing an animal if necessary to protect his or her person or property or that of another. *Futch v. State*, 314 Ga. App. 294, 723 S.E.2d 714 (2012).

Direct evidence supported conviction. — Evidence was sufficient to establish that the defendant killed a neighbor's dog without justification because the defendant had previously told the neighbor that the defendant shot and killed the dog;

pursuant to O.C.G.A. § 24-1-1(3), those prior admissions were direct evidence that the defendant killed the dog. *Futch v. State*, 314 Ga. App. 294, 723 S.E.2d 714 (2012).

Circumstantial evidence supported conviction. — Circumstantial evidence was sufficient to support the defendant's conviction for cruelty to animals in violation of O.C.G.A. § 16-12-4(b) for killing a neighbor's dog because there was evidence that the defendant had a proclivity to kill dogs on the defendant's property, the defendant killed a dog around the time frame that the neighbor's dog went missing, and the neighbor's dog never expressed any aggressive behavior towards other animals. *Futch v. State*, 314 Ga. App. 294, 723 S.E.2d 714 (2012).

ARTICLE 2

GAMBLING AND RELATED OFFENSES

PART 1

GAMBLING

16-12-20. Definitions.

As used in this part, the term:

- (1) "Bet" means an agreement that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value. A bet does not include:

(A) Contracts of indemnity or guaranty or life, health, property, or accident insurance; or

(B) An offer of a prize, award, or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in such contest.

(2) "Gambling device" means:

(A) Any contrivance which for a consideration affords the player an opportunity to obtain money or other thing of value, the award of which is determined by chance even though accompanied by some skill, whether or not the prize is automatically paid by contrivance;

(B) Any slot machine or any simulation or variation thereof;

(C) Any matchup or lineup game machine or device, operated for any consideration, in which two or more numerals, symbols, letters, or icons align in a winning combination on one or more lines vertically, horizontally, diagonally, or otherwise, without assistance by the player. Use of skill stops shall not be considered assistance by the player; or

(D) Any video game machine or device, operated for any consideration, for the play of poker, blackjack, any other card game, or keno or any simulation or variation of any of the foregoing, including, but not limited to, any game in which numerals, numbers, or any pictures, representations, or symbols are used as an equivalent or substitute for cards in the conduct of such game.

Any item described in subparagraph (B), (C), or (D) of this paragraph shall be a prohibited gambling device subject to and prohibited by this part, notwithstanding any inference to the contrary in any other law of this state.

(3) "Gambling place" means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the principal uses of which is the making or settling of bets; the receiving, holding, recording, or forwarding of bets or offers to bet; or the conducting of a lottery or the playing of gambling devices.

(4) "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prize, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or by some other name. Except as otherwise provided in Code Section 16-12-35, a lottery shall also include the payment of cash or other consideration or the payment for merchan-

dise or services and the option to participate in or play, even if others can participate or play for free, a no skill game or to participate for cash, other consideration, other evidence of winnings, or other noncash prizes by lot or in a finite pool on a computer, mechanical device, or electronic device whereby the player is able to win a cash or noncash prize, other consideration, or other evidence of winnings. A lottery shall also include the organization of chain letter or pyramid clubs as provided in Code Section 16-12-38. A lottery shall not mean a:

- (A) Promotional giveaway or contest which conforms with the qualifications of a lawful promotion specified in paragraph (16) of subsection (b) of Code Section 10-1-393;
- (B) Scheme whereby a business gives away prizes to persons selected by lot if such prizes are made on the following conditions:
 - (i) Such prizes are conducted as advertising and promotional undertakings in good faith solely for the purpose of advertising the goods, wares, and merchandise of such business;
 - (ii) No person to be eligible to receive such prize shall be required to:
 - (I) Pay any tangible consideration to the operator of such business in the form of money or other property or thing of value;
 - (II) Purchase any goods, wares, merchandise, or anything of value from such business; or
 - (III) Be present or be asked to participate in a seminar, sales presentation, or any other presentation, by whatever name denominated, in order to win such prizes; and
 - (iii) The prizes awarded shall be noncash prizes and cannot be awarded based upon the playing of a game on a computer, mechanical device, or electronic device at a place of business in this state;
- (C) Raffle authorized under Code Section 16-12-22.1; or
- (D) National or regional promotion, contest, or sweepstakes conducted by any corporation or wholly owned subsidiary or valid franchise of such corporation, either directly or through another entity, provided that, at the time of such promotion, contest, or sweepstakes, such corporation:
 - (i) Is registered under the federal Securities Exchange Act of 1934; and
 - (ii) Has total assets of not less than \$100 million.

The provisions of this part shall not be applicable to games offered by the Georgia Lottery Corporation pursuant to Chapter 27 of Title 50. (Code 1933, § 26-2701, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1975, p. 1072, § 2; Ga. L. 1982, p. 1661, § 3; Ga. L. 1985, p. 437, § 1; Ga. L. 1986, p. 1313, § 3; Ga. L. 1987, p. 1386, § 3; Ga. L. 1995, p. 832, § 1; Ga. 2001, Ex. Sess., p. 312, § 1; Ga. L. 2012, p. 1136, § 2/SB 431.)

The 2012 amendment, effective May 2, 2012, in paragraph (4), added the second sentence of the introductory paragraph; deleted “and” at the end of division (4)(B)(i); substituted “and” for “or” at the end of subdivision (4)(B)(ii)(III); added division (4)(B)(iii); added “; or” at the end of subparagraph (4)(C); added subparagraph (4)(D); and added the undesignated paragraph at the end. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 1136,

§ 4/SB 431, not codified by the General Assembly, provides, in part, that this Code section shall apply to conduct that occurs on and after May 2, 2012. It is not the intention of this Act to abate any prosecution undertaken for conduct occurring under the law in effect prior to such date, and any offense committed before May 2, 2012, shall be prosecuted and punished under the statutes in effect at the time the offense was committed.

16-12-22. Commercial gambling.

JUDICIAL DECISIONS

Forfeiture of gambling devices. — Trial court did not err in issuing interlocutory injunctions and continuing receiverships over store property seized pursuant to O.C.G.A. § 16-14-7 based on alleged video gambling activity in violation of O.C.G.A. § 16-12-22 and racketeering ac-

tivity under O.C.G.A. § 16-14-3(8) and (9). Remand was required, however, for consideration of whether the forfeitures were excessive fines in violation of U.S. Const., amend. VIII. Patel v. State, 289 Ga. 479, 713 S.E.2d 381 (2011).

16-12-35. Applicability of part.

JUDICIAL DECISIONS

Skill in operation of machine. — There was no evidence that any of the gambling machines seized for civil forfeiture proceedings from stores involved some skill in the machine’s operation as

required under O.C.G.A. § 16-12-35(d)(1); the sole evidence was that a player simply pressed a button to play these machines. Patel v. State, 289 Ga. 479, 713 S.E.2d 381 (2011).

16-12-38. Pyramid promotional schemes; exceptions; penalties.

(a) As used in this Code section, the term:

- (1) “Compensation” means a payment of any money, thing of value, or financial benefit.
- (2) “Consideration” means the payment of cash or the purchase of goods, services, or intangible property, and does not include the

purchase of goods or services furnished at cost to be used in making sales and not for resale, or time and effort spent in pursuit of sales or recruiting activities.

(3) "Inventory" includes both goods and services, including company produced promotional materials, sales aids, and sales kits that the plan or operation requires independent salespersons to purchase.

(4) "Inventory loading" means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount which unreasonably exceeds that which the salesperson can expect to resell for ultimate consumption or to use or consume in a reasonable time period.

(5) "Participant" means a person who joins a plan or operation.

(6) "Person" means an individual, a corporation, a partnership, or any association or unincorporated organization.

(7) "Promote" means to contrive, prepare, establish, plan, operate, advertise, or to otherwise induce or attempt to induce another person to be a participant.

(8) "Pyramid promotional scheme" means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants into the plan or operation rather than from the sale of goods, services, or intangible property to participants or by participants to others.

(b)(1) No person may establish, promote, operate, or participate in any pyramid promotional scheme. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan does not change the identity of the plan as a pyramid promotional scheme. It is not a defense under this subsection that a person, on giving consideration, obtains goods, services, or intangible property in addition to the right to receive compensation.

(2) Nothing in this Code section may be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale so long as the plan or operation does not promote or induce inventory loading and complies with the cancellation requirements of subsection (d) of Code Section 10-1-415.

(3) Any person who participates in a pyramid promotional scheme shall be guilty of a misdemeanor of a high and aggravated nature.

Any person who establishes, promotes, or operates a pyramid promotional scheme shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(4) Nothing in this Code section shall be construed so as to include a "multilevel distribution company," as defined in paragraph (6) of Code Section 10-1-410, which is operating in compliance with Part 3 of Article 15 of Chapter 1 of Title 10. (Code 1981, § 16-12-38, enacted by Ga. L. 1985, p. 437, § 2; Ga. L. 1988, p. 1868, § 3; Ga. L. 1992, p. 6, § 16; Ga. L. 2005, p. 657, § 1/SB 141; Ga. L. 2012, p. 775, § 16/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (b)(4).

PART 2

BINGO

16-12-55. (Effective January 1, 2013. See note.) Certification of tax-exempt status of organization; issuance of certificate of licensure.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

ARTICLE 3

OBSCENITY AND RELATED OFFENSES

PART 1

GENERAL PROVISIONS

16-12-80. Distributing obscene material; obscene material defined; penalty.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *In re Levin*, 289 Ga. 170, 709 S.E.2d 808 (2011).

PART 2

OFFENSES RELATED TO MINORS GENERALLY

16-12-100. Sexual exploitation of children; reporting violation; forfeiture; penalties.

JUDICIAL DECISIONS

Probable cause.

Trial court did not err in denying the defendant's motion to suppress evidence seized from a search warrant authorizing entry into the defendant's home because the affidavit submitted in support of the warrant provided a sufficient basis for the magistrate to make a practical, common-sense decision that there was a fair probability that evidence of sexual exploitation of children would be found at the defendant's residence; the National Center for

Missing and Exploited Children forwarded the information it received from a security specialist employed by the host of the website to the Georgia Bureau of Investigation (GBI), and the affidavit of a special agent with the GBI set forth facts that showed both the reliability and basis of knowledge of the specialist. *James v. State*, 312 Ga. App. 130, 717 S.E.2d 713 (2011), cert. denied, No. S12C0347, 2012 Ga. LEXIS 227 (Ga. 2012).

16-12-100.1. Electronically furnishing obscene material to minors.

JUDICIAL DECISIONS

Accusation insufficient as to date of offense. — Accusation that alleged contributing to the delinquency of a minor and electronically furnishing obscene material to a minor within a two and a half month time frame was subject to a demur-

rer because the state gave no explanation as to why an investigating officer was unable to ascertain the dates of the offenses from the victim's computer. *State v. Meeks*, 309 Ga. App. 855, 711 S.E.2d 403 (2011).

16-12-100.2. Computer or electronic pornography and child exploitation prevention.

JUDICIAL DECISIONS

Entrapment not shown by defendant's electronic communication.

When the defendant was charged with using the Internet to seduce, solicit, lure, or entice a child or a person believed to be a child to commit an illegal sex act, under O.C.G.A. § 16-12-100.2(d)(1), attempted aggravated child molestation, under O.C.G.A. §§ 16-4-1 and 16-6-4(c), and attempted child molestation, under O.C.G.A. §§ 16-4-1 and 16-6-4(a), it was not error to deny the defendant's motion for a directed verdict of acquittal based on

entrapment because the jury's determination that entrapment did not occur was supported by evidence that: (1) the defendant continued communicating with a person the defendant believed to be 14 years old, including having sexually explicit conversations with the person in which the defendant stated the defendant wanted "a lot of oral," after the defendant learned that the person was 14 years old; (2) the defendant discussed with the person how the person could meet the defendant if the person could not drive, in-

quired whether the person had ever snuck away from home before, and stated that the defendant believed the union would be legal if the defendant were 16 years old, instead of the defendant's actual age; (3) the defendant left the defendant's home of Tennessee to meet a purportedly 14-year-old girl in order to have sex with the person, which the defendant admitted in the defendant's statements to officers; and (4) the defendant brought condoms with the defendant, which the defendant stated were to prevent any "accidents" in the event the defendant was able to have sex with the person. *Millsaps v. State*, 310 Ga. App. 769, 714 S.E.2d 661 (2011).

Evidence sufficient to support conviction. — Evidence was sufficient to establish the defendant's guilt of computer pornography and child exploitation in violation of the Computer Pornography and Child Exploitation Prevention Act, O.C.G.A. § 16-12-100.2(d)(1), because the evidence established that the defendant committed the offense by using a com-

puter on-line service to solicit sex from a person who the defendant believed was a fifteen-year-old girl, an act which would have constituted child molestation; although the on-line solicitation crime references child molestation as an underlying purpose, the principal act proscribed by the crime is solicitation and does not require the accomplishment of an act of child molestation. *Bolton v. State*, 310 Ga. App. 801, 714 S.E.2d 377 (2011).

Prior conviction of offense admissible in trial for other sexual crimes. — Because the defendant's prior convictions under O.C.G.A. § 16-12-100.2(d)(1) and (e)(1) and defendant's indictment for aggravated sexual battery, aggravated child molestation, and child molestation alleged crimes that were sexual in nature with minors and involved a lustful disposition, the independent offenses were admissible under Ga. Unif. Super. Ct. R. 31.3(B). *Butler v. State*, 311 Ga. App. 873, 717 S.E.2d 649 (2011).

ARTICLE 4

OFFENSES AGAINST PUBLIC TRANSPORTATION

PART 2

TRANSPORTATION PASSENGER SAFETY

16-12-123. Bus or rail vehicle hijacking; boarding with concealed weapon; company use of reasonable security measures.

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U. L. Rev. 131 (2011).

JUDICIAL DECISIONS

Evidence sufficient for bus hijacking. — Trial court did not err in denying the defendant's motion for a directed verdict after a jury found the defendant guilty of bus hijacking, O.C.G.A. § 16-12-123(a)(1)(A), because the jury was authorized to conclude beyond a reasonable doubt that the defendant exercised control of the bus by force; the de-

fendant brandished a handgun in the open door of the bus as the defendant ordered a passenger to get off, and the bus driver testified that the driver did not feel free to drive away because the driver felt the driver's life was in danger and the driver did not want to agitate the defendant. *Cannon v. State*, 310 Ga. App. 262, 712 S.E.2d 645 (2011).

16-12-127. Prohibition on firearms, hazardous substances, knives, or other devices; penalty; affirmative defenses.

Law reviews. — For article, “Crimes and Offenses,” see 27 Ga. St. U. L. Rev. 131 (2011).

ARTICLE 5

ABORTION

16-12-140. (For effective date, see note) Criminal abortion.

(a) A person commits the offense of criminal abortion when, in violation of Code Section 16-12-141, he or she administers any medicine, drugs, or other substance whatever to any woman or when he or she uses any instrument or other means whatever upon any woman with intent to produce a miscarriage or abortion.

(b) A person convicted of the offense of criminal abortion shall be punished by imprisonment for not less than one nor more than ten years. (Ga. L. 1876, p. 113, § 2; Code 1882, § 4337b; Penal Code 1895, § 81; Penal Code 1910, § 81; Code 1933, § 26-1101; Code 1933, §§ 26-1201, 26-1203, enacted by Ga. L. 1968, p. 1249, § 1; Code 1933, § 26-1204, enacted by Ga. L. 1973, p. 635, § 1; Ga. L. 2012, p. 575, § 2/HB 954.)

Delayed effective date. — This Code section, as set out above, becomes fully effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective May 1, 2012, for purposes of promulgating rules and regulations and effective for all other purposes on January 1, 2013, in subsection (a), substituted “A person” for “Except as otherwise provided in Code Section 16-12-141, a person” at the beginning, and, near the middle, substituted “, in violation of Code Section 16-12-141, he or she” for “he” and inserted “or she”.

Editor’s notes. — Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: “The General Assembly makes the following findings:

“(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

“(2) There is substantial evidence that,

by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

“(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

“(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

“(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

“(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn chil-

dren from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U. L. Rev. 209 (2011).

16-12-141. (For effective date, see note) Restrictions on the performance of abortions; availability of records.

(a) No abortion is authorized or shall be performed in violation of subsection (a) of Code Section 31-9B-2.

(b)(1) No abortion is authorized or shall be performed after the first trimester unless the abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or in a health facility licensed as an abortion facility by the Department of Community Health.

(2) An abortion shall only be performed by a physician licensed under Article 2 of Chapter 34 of Title 43.

(c)(1) No abortion is authorized or shall be performed if the probable gestational age of the unborn child has been determined in accordance with Code Section 31-9B-2 to be 20 weeks or more unless the pregnancy is diagnosed as medically futile, as such term is defined in Code Section 31-9B-1, or in reasonable medical judgment the abortion is necessary to:

(A) Avert the death of the pregnant woman or avert serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No such condition shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function; or

(B) Preserve the life of an unborn child.

As used in this paragraph, the term "probable gestational age of the unborn child" has the meaning provided by Code Section 31-9B-1.

(2) In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the pregnant woman than would another available method. No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully

engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function. If the child is capable of sustained life, medical aid then available must be rendered.

(d) Hospital or other licensed health facility records shall be available to the district attorney of the judicial circuit in which the hospital or health facility is located. (Code 1933, § 26-1202, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1973, p. 635, § 1; Ga. L. 1997, p. 142, § 1; Ga. L. 2005, p. 1450, § 4/HB 197; Ga. L. 2009, p. 453, §§ 1-4, 1-6/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-5/HB 214; Ga. L. 2012, p. 575, § 2/HB 954.)

Delayed effective date. — This Code section, as set out above, becomes fully effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the bound volume.

The 2012 amendment, effective May 1, 2012, for purposes of promulgating rules and regulations and effective for all other purposes on January 1, 2013, rewrote this Code section.

Editor's notes. — Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely adminis-

tered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U. L. Rev. 209 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

16-12-141.1. Disposal of aborted fetuses; reporting requirements; penalties; public report; confidentiality of identity of physicians filing reports.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

ARTICLE 6

HUMAN BODY TRAFFIC

Law reviews. — For note, “Beyond the ‘Tiers’ of Human Trafficking Victims: Islamic Law’s Ability to Push the Muslim World to the Top of the United States

Trafficking Tier Placements and into Compliance with International Law,” see 39 Ga. J. Int’l & Comp. L. 391 (2011).

CHAPTER 13

CONTROLLED SUBSTANCES

Article 2

Regulation of Controlled Substances

PART 1

SCHEDULES, OFFENSES, AND PENALITIES

Sec.

16-13-25. Schedule I.

16-13-29. Schedule V.

16-13-30. (For effective date, see note) Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties.

16-13-30. (For effective date, see note) Purchase, possession, man-

Sec.

facture, distribution, or sale of controlled substances or marijuana; penalties.

16-13-30. (Effective July 1, 2014. See note.) Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties.

16-13-31. Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine; penalties.

Article 3

Dangerous Drugs

16-13-71. "Dangerous drug" defined.

ARTICLE 1

GENERAL PROVISIONS

16-13-2. Conditional discharge for possession of controlled substances as first offense and certain nonviolent property crimes; dismissal of charges; restitution to victims.

JUDICIAL DECISIONS

Proof of weight. — To discharge the burden of proving that the weight of the marijuana exceeded one ounce, it is not necessary for the state to come forward with evidence of how many grams equal an ounce, even if the state's witnesses testify about the weight of the marijuana in terms of grams; when O.C.G.A. § 16-13-2(b) refers to an "ounce" of mari-

juana, the statute refers, as a matter of law, to an avoirdupois ounce, which is the equivalent of, when rounded up to the nearest hundredth of a gram, 28.35 grams, and the number of grams in an ounce is not something that varies from case to case or is open to reasonable dispute. *Gaudlock v. State*, 310 Ga. App. 149, 713 S.E.2d 399 (2011).

Evidence sufficient to show possession.

Evidence was sufficient to sustain defendant's conviction for possession of more than one ounce of marijuana in violation of O.C.G.A. §§ 16-13-2(b) and 16-13-30(j)

because the state adduced evidence at trial that the defendant had possession of 28.8 grams of marijuana, which was, by definition, more than one ounce of marijuana. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399 (2011).

ARTICLE 2

REGULATION OF CONTROLLED SUBSTANCES

PART 1

SCHEDULES, OFFENSES, AND PENALITIES

16-13-21. Definitions.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 269 (2011). For

article, "Crimes and Offenses: Controlled Substances," see 28 Ga. St. U. L. Rev. 269 (2011).

16-13-22. Administration of article; standards and schedules.

JUDICIAL DECISIONS

State failed to prove drug regulated by law. — Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated

controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98 (2011).

16-13-23. Nomenclature for controlled substances.

JUDICIAL DECISIONS

State failed to prove drug regulated by law. — Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated

controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98 (2011).

16-13-25. Schedule I.

The controlled substances listed in this Code section are included in Schedule I:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, pursuant to this article, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (A) Acetylmethadol;
- (B) Allylprodine;
- (C) Reserved;
- (D) Alphameprodine;
- (E) Alphamethadol;
- (F) Benzethidine;
- (G) Betacetylmethadol;
- (H) Betameprodine;
- (I) Betamethadol;
- (J) Betaprodine;
- (K) Clonitazene;
- (L) Dextromoramide;
- (M) Dextromorphan;
- (N) Diampromide;
- (O) Diethylthiambutene;
- (P) Dimenoxadol;
- (Q) Dimetheptanol;
- (R) Dimethylthiambutene;
- (S) Dioxaphetyl butyrate;
- (T) Dipipanone;
- (U) Ethylmethylthiambutene;
- (V) Etonitazene;
- (W) Etoxeridene;
- (X) Furethidine;

- (Y) Hydroxypethidine;
- (Z) Ketobemidone;
- (AA) Levomoramide;
- (BB) Levophenacylmorphan;
- (CC) Morpheridine;
- (DD) Noracymethadol;
- (EE) Norlevorphanol;
- (FF) Normethadone;
- (GG) Norpipanone;
- (HH) Phenadoxone;
- (II) Phenampromide;
- (JJ) Phenomorphan;
- (KK) Phenoperidine;
- (LL) Piritramide;
- (MM) Proheptazine;
- (NN) Properidine;
- (OO) Propiram;
- (PP) Racemoramide;
- (QQ) Trimeperidine;

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Acetorphine;
- (B) Acetyldihydrocodeine;
- (C) Benzylmorphine;
- (D) Codeine methylbromide;
- (E) Codeine-N-Oxide;
- (F) Cyprenorphine;
- (G) Desomorphine;
- (H) Dihydromorphine;
- (I) Etorphine;

- (J) Heroin;
- (K) Hydromorphenol;
- (L) Methyldesorphine;
- (M) Methyldihydromorphine;
- (N) Morphine methylbromide;
- (O) Morphine methylsulfonate;
- (P) Morphine-N-Oxide;
- (Q) Myrophine;
- (R) Nicocodeine;
- (S) Nicomorphine;
- (T) Normorphine;
- (U) Pholcodine;
- (V) Thebacon;

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers (whether optical, position, or geometrics), and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) 3, 4-methylenedioxymethamphetamine;
- (B) 5-methoxy-3, 4-methylenedioxymethamphetamine;
- (C) 3, 4, 5-trimethoxyamphetamine;
- (D) Bufotenine;
- (E) Diethyltryptamine;
- (F) Dimethyltryptamine;
- (G) 4-methyl-2, 5-dimethoxyamphetamine;
- (H) Ibogaine;
- (I) Lysergic acid diethylamide;
- (J) Mescaline;
- (K) Peyote;
- (L) N-ethyl-3-piperidyl benzilate;
- (M) N-methyl-3-piperidyl benzilate;

- (N) Psilocybin;
- (O) Psilocyn (Psilocin);
- (P) Tetrahydrocannabinols which shall include, but are not limited to:
 - (i) All synthetic or naturally produced samples containing more than 15 percent by weight of tetrahydrocannabinols; and
 - (ii) All synthetic or naturally produced tetrahydrocannabinol samples which do not contain plant material exhibiting the external morphological features of the plant cannabis;
- (Q) 2, 5-dimethoxyamphetamine;
- (R) 4-bromo-2, 5-dimethoxyamphetamine;
- (S) 4-methoxyamphetamine;
- (T) Cyanoethylamphetamine;
- (U) (1-phenylcyclohexyl) ethylamine;
- (V) 1-(1-phenylcyclohexyl) pyrrolidine;
- (W) Phencyclidine;
- (X) 1-piperidinocyclohexanecarbonitrile;
- (Y) 1-phenyl-2-propanone (phenylacetone);
- (Z) 3, 4-Methylenedioxymethamphetamine (MDMA);
- (AA) 1-methyl-4-phenyl-4-propionoxypiperidine;
- (BB) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine;
- (CC) 3-methylfentanyl;
- (DD) N-ethyl-3, 4-methylenedioxymphetamine;
- (EE) Para-fluorofentanyl;
- (FF) 2,5-Dimethoxy-4-Ethylamphetamine;
- (GG) Cathinone;
- (HH) MPPP (1-Methyl-4-Phenyl-4-Propionoxypiperidine);
- (II) PEPAP (1-(2-phenethyl)-4 phenyl-4-acetoxy piperide);
- (JJ) Alpha-Methylthiofentanyl;
- (KK) Acetyl-Alpha-Methylfentanyl;
- (LL) 3-Methylthiofentanyl;
- (MM) Beta-Hydroxyfentanyl;

- (NN) Thiofentanyl;
- (OO) 3,4-Methylenedioxy-N-Ethylamphetamine;
- (PP) 4-Methylaminorex;
- (QQ) N-Hydroxy-3,4-Methylenedioxyamphetamine;
- (RR) Beta-Hydroxy-3-Methylfentanyl;
- (SS) Chlorophenylpiperazine (CPP);
- (TT) N, N-Dimethylamphetamine;
- (UU) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine;
- (VV) 4-Bromo-2,5-Dimethoxyphenethylamine (DMPE);
- (WW) Alpha-Ethyltryptamine;
- (XX) Methcathinone;
- (YY) Aminorex;
- (ZZ) 4-iodo-2,5-dimethoxyamphetamine;
- (AAA) 4-chloro-2,5-dimethoxyamphetamine;
- (BBB) 3,4-Methylenedioxypyrovalerone (MDPV);
- (CCC) 4-Methylmethcathinone (Mephedrone);
- (DDD) 3,4-Methylenedioxymethcathinone (Methylone);
- (EEE) 4-Methoxymethcathinone;
- (FFF) 4-Fluoromethcathinone;
- (GGG) Fluorophenylpiperazine (FPP);

(4) Any material, compound, mixture, or preparation which contains any of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Fenethylline;
- (B) N-(1-benzyl-4-piperidyl)-N-phenylpropanamide (benzyl-fentanyl);
- (C) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl);

(5) Any material, compound, mixture, or preparation which contains any quantity of the following substances, their salts, isomers (whether optical, position, or geometrics), and salts of isomers, unless

specifically excepted, whenever the existence of these substances, their salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Gamma hydroxybutyric acid (gamma hydroxy butyrate); provided, however, that this does not include any amount naturally and normally occurring in the human body; and
- (B) Sodium oxybate, when the FDA approved form of this drug is not:
 - (i) In a container labeled in compliance with subsection (a) or (b) of Code Section 26-3-8; and
 - (ii) In the possession of:
 - (I) A registrant permitted to dispense the drug;
 - (II) Any person other than to whom the drug was prescribed; or
 - (III) Any person who attempts to or does unlawfully possess, sell, distribute, or give this drug to any other person;
- (6) Notwithstanding the fact that Schedule I substances have no currently accepted medical use, the General Assembly recognizes certain of these substances which are currently accepted for certain limited medical uses in treatment in the United States but have a high potential for abuse. Accordingly, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of methaqualone, including its salts, isomers, optical isomers, salts of their isomers, and salts of these optical isomers, is included in Schedule I;
- (7) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7);
- (8) 1-(3-Trifluoromethylphenyl) Piperazine (TFMPP);
- (9) N-Benzylpiperazine (BZP);
- (10) 5-Methoxy-N,N-Diisopropyltryptamine (5-MeO-DIPT);
- (11) Alpha-Methyltryptamine (AMT);
- (12) Any of the following compounds, derivatives, their salts, isomers, and salts of isomers, unless specifically utilized as part of the manufacturing process by a commercial industry of a substance or material not intended for human ingestion or consumption, as a prescription administered under medical supervision, or research at a recognized institution, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Naphthoylindoles;
- (B) Naphthylmethylindoles;
- (C) Naphthoylpyrroles;
- (D) Naphthylideneindenes;
- (E) Phenylacetylindoles;
- (F) Cyclohexylphenols;
- (G) Benzoylindoles;
- (H) Tricyclic benzopyrans;
- (I) Adamantoylindoles;
- (J) Indazole amides;
- (K) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (WIN 55,212-2); or
- (L) Any compound, unless specifically excepted or listed in this or another schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
 - (i) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substitutions, whether or not further substituted in the ring system;
 - (ii) By substitution at the 3-position with an acyclic alkyl substitution; or
 - (iii) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure. (Code 1933, § 79A-806, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 1668, § 6; Ga. L. 1979, p. 859, § 5; Ga. L. 1980, p. 1746, § 4; Ga. L. 1981, p. 557, § 3; Ga. L. 1982, p. 2403, §§ 11, 16; Ga. L. 1984, p. 22, § 16; Ga. L. 1984, p. 1019, § 1; Ga. L. 1985, p. 1219, § 2; Ga. L. 1986, p. 1555, § 3; Ga. L. 1987, p. 261, § 1; Ga. L. 1989, p. 233, § 1; Ga. L. 1990, p. 8, § 16; Ga. L. 1990, p. 640, § 1; Ga. L. 1992, p. 1131, § 1; Ga. L. 1994, p. 169, §§ 1-3, 3.1; Ga. L. 1996, p. 356, § 1; Ga. L. 2001, p. 816, § 1; Ga. L. 2002, p. 415, § 16; Ga. L. 2003, p. 349, § 2; Ga. L. 2005, p. 1028, § 1/SB 89; Ga. L. 2006, p. 219, § 14/HB 1054; Ga. L. 2008, p. 169, §§ 1, 2/HB 1090; Ga. L. 2010, p. 338, § 1/HB 1309; Ga. L. 2010, p. 860, § 1/SB 353; Ga. L. 2011, p. 656, §§ 1, 2/SB 93; Ga. L. 2012, p. 40, §§ 2, 3/SB 370.)

The 2012 amendment, effective March 27, 2012, added subparagraph (3)(GGG); and rewrote paragraph (12).

Editor's notes. — Ga. L. 2012, p. 40, § 1/SB 370, not codified by the General Assembly, which provides for the annual

update of the identity of controlled substances and dangerous drugs, is dedicated to the memory of Chase Corbitt Burnett and shall be known and may be cited as "Chase's Law."

16-13-26. Schedule II.

JUDICIAL DECISIONS

Evidence sufficient to support conviction of sale of methamphetamine.

— Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, sup-

ported the defendant's convictions for trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B) and 16-13-30(b). Culajay v. State, 309 Ga. App. 631, 710 S.E.2d 846 (2011).

16-13-28. Schedule IV.

JUDICIAL DECISIONS

Identification of drug.

Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20, by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not

the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98 (2011).

16-13-29. Schedule V.

The controlled substances listed in this Code section are included in Schedule V:

(1) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or salts thereof, which also contains one or more nonnarcotic, active, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(A) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(B) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

- (C) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (D) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (E) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
- (2) Lacosamide;
- (3) Pregabalin;
- (4) Pyrovalerone;
- (5) Pseudoephedrine as an exempt over-the-counter (OTC) Schedule V controlled substance distributed in the same manner as set forth in Code Section 16-13-29.2; provided, however, that such exemption shall take effect immediately and shall not require rulemaking by the State Board of Pharmacy; provided, further, that wholesale drug distributors located within this state and licensed by the State Board of Pharmacy and which are registered and regulated by the U.S. Drug Enforcement Administration (DEA) shall not be subject to any board requirements for controlled substances for the storage, reporting, recordkeeping, or physical security of drug products containing pseudoephedrine which are more stringent than those included in DEA regulations; or
- (6) Ezogabine. (Code 1933, § 79A-810, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 1668, § 9; Ga. L. 1979, p. 859, § 9; Ga. L. 1980, p. 1746, § 8; Ga. L. 1981, p. 557, § 5; Ga. L. 1984, p. 1019, § 2; Ga. L. 1986, p. 1555, § 5; Ga. L. 1989, p. 233, § 5; Ga. L. 1993, p. 590, § 3; Ga. L. 2003, p. 349, § 5; Ga. L. 2007, p. 605, § 2/HB 286; Ga. L. 2010, p. 860, § 4/SB 353; Ga. L. 2011, p. 656, § 6/SB 93; Ga. L. 2012, p. 40, § 4/SB 370.)

The 2012 amendment, effective March 27, 2012, deleted "or" at the end of paragraph (4); substituted ";" or" for the period at the end of paragraph (5); and added paragraph (6).

Editor's notes. — Ga. L. 2012, p. 40, § 1/SB 370, not codified by the General

Assembly, which provides for the annual update of the identity of controlled substances and dangerous drugs, is dedicated to the memory of Chase Corbitt Burnett and shall be known and may be cited as "Chase's Law."

16-13-30. (For effective date, see note) Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties.

- (a) Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his or her control any controlled substance.

(b) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance.

(c) Except as otherwise provided, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule I or a narcotic drug in Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than 15 years.

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense; provided, however, that the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(e) Any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than 15 years.

(f) Reserved.

(g) Except as provided in subsection (l) of this Code section, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than three years. Upon conviction of a third or subsequent offense, he or she shall be imprisoned for not less than one year nor more than five years.

(h) Any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(i)(1) Except as authorized by this article, it is unlawful for any person to possess or have under his or her control a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than two years.

(2) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer,

purchase, sell, or possess with intent to distribute a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(j)(1) It shall be unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana.

(2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code Section 16-13-2, any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years or by a fine not to exceed \$20,000.00, or both.

(l)(1) Any person who violates subsection (a) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than 15 years.

(2) Any person who violates subsection (b) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense, but that subsection and the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense. (Code 1933, § 79A-811, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1975, p. 1112, § 1; Ga. L. 1979, p. 1258, § 1; Ga. L. 1980, p. 432, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1990, p. 992, § 1; Ga. L. 1992, p. 2041, § 1; Ga. L. 1996, p. 1023, §§ 1.1, 2; Ga. L. 1997, p. 1311, § 4; Ga. L. 2012, p. 899, § 3-7A/HB 1176.)

Delayed effective date. — This Code section, as set forth above, is effective until July 1, 2013. For version of this Code

section effective from July 1, 2013, until July 1, 2014, see the second version of this Code section. For version of this Code

section effective beginning July 1, 2014, see the third version of this Code section.

The 2012 amendment, effective July 1, 2012, substituted “one year” for “two years” throughout the Code section; inserted “or her” near the end of subsection (a); deleted the former second sentence of subsection (c), which read: “Upon conviction of a second or subsequent offense, he shall be imprisoned for not less than five years nor more than 30 years.”; deleted the former second sentence of subsection (e), which read: “Upon conviction of a second or subsequent offense, he shall be punished by imprisonment for not less than five years nor more than 30 years.”; in subsection (g), in the first sentence, substituted “Except as provided in subsection (l) of this Code section, any” for “Any”, and substituted “three years” for “five years”, in the second sentence, substituted “third or subsequent offense, he or she shall” for “second or subsequent offense, he shall”, and substituted “five years” for “ten years”; designated former subsection (i) as present paragraph (i)(1); in paragraph (i)(1), substituted “possess or have under his or her control a counterfeit substance” for “possess, have under his control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute” in the

first sentence, in the second sentence, substituted “paragraph” for “subsection” and substituted “two years” for “ten years”; added paragraph (i)(2); in paragraph (j)(1), substituted “It shall be” for “It is”, and inserted “or her”; and deleted the former second sentence of paragraph (l)(1), which read: “Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than five years nor more than 30 years.” See editor’s note for applicability.

Editor’s notes. — Code Section 16-13-30 is set out three times in this Code. The first version is effective until July 1, 2013, the second version is effective until July 1, 2014, and the third version becomes effective on that date.

Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act.”

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

SENTENCING

SEARCH AND SEIZURE

POSSESSION

DELIVERY AND DISTRIBUTION

MARIJUANA

General Consideration

State failed to prove drug regulated by law. — Defendant was improperly convicted of violating the Georgia’s Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily

designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that “Ambien” was a Schedule IV controlled substance, the state was required to identify “Ambien” as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98 (2011).

Prior similar act admissible.

Trial court did not abuse the court’s

discretion in admitting similar transaction evidence because both the prior incident and the incident for which the defendant was convicted involved the possession of cocaine since the prior possession was for the purpose of distribution, inasmuch as the evidence showed that the defendant did, in fact, distribute cocaine on that occasion, and the possession for which the defendant was convicted was for an unknown purpose and not clearly for personal use; one incident involved possession and sale of less than one gram of cocaine, the other involved possession of less than two grams of cocaine, and both incidents occurred in the county within a span of two weeks. *Gaudlock v. State*, 310 Ga. App. 149, 713 S.E.2d 399 (2011).

Erroneous admission of prior conviction harmless. — Trial court's admission of the defendant's prior convictions for possession of cocaine was erroneous because the state did not present any testimony at trial establishing the prior convictions, but rather, the state's evidence was limited to the introduction of copies of the defendant's guilty pleas and convictions for the prior drug possession offenses; however, in light of the overwhelming competent evidence establishing the defendant's guilt of the sale of cocaine, it was unlikely that the erroneous admission of the prior possession offenses contributed to the verdict. *Perry v. State*, No. A11A1561, 2012 Ga. App. LEXIS 237 (Mar. 5, 2012).

Trial court did not abuse the court's discretion in admitting evidence of the defendant's prior attempts to manufacture methamphetamine because the state needed the evidence of the defendant's prior drug conviction to show the defendant's bent of mind and course of conduct with respect to the methamphetamine offense at issue, criminal attempt to manufacture methamphetamine in violation of O.C.G.A. §§ 16-4-1 and 16-13-30(b); the defendant disclaimed any involvement with or knowledge of a methamphetamine laboratory. *Newton v. State*, 313 Ga. App. 889, 723 S.E.2d 95 (2012).

Based on the defendant's position that the defendant was not involved with a methamphetamine laboratory, as well as

the similarity of the defendant's prior drug crime with criminal attempt to manufacture methamphetamine, the trial court did not abuse the court's discretion in admitting the evidence of the defendant's prior attempts to manufacture methamphetamine for the purpose of showing the defendant's bent of mind and course of conduct; the trial court was authorized to find that the probative value of the similar transaction evidence outweighed its prejudicial effect, and the trial court provided jury instructions that limited consideration of the similar transaction evidence to the appropriate purposes and provided guidance so as to diminish its prejudicial impact. *Newton v. State*, 313 Ga. App. 889, 723 S.E.2d 95 (2012).

Jury instruction insufficient.

Reversal of a conviction for conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., through a violation of O.C.G.A. § 16-13-30(j)(1), was required because the trial court failed to provide any limiting instruction informing jurors that the purchaser and the buyer in a drug transaction could not conspire together. *Darville v. State*, 289 Ga. 698, 715 S.E.2d 110 (2011).

Cited in *Foster v. State*, No. A11A2312, 2012 Ga. App. LEXIS 249 (Mar. 7, 2012).

Sentencing

Construed with O.C.G.A. § 17-10-7.

Defendant sentenced to life in prison without parole, under O.C.G.A. §§ 16-13-30(d) and 17-10-7(c), based on the defendant's prior convictions stemming from guilty pleas, was not entitled to habeas relief on the basis of the defendant's trial counsel's failure to review the transcripts of the defendant's prior plea colloquies because: (1) no *per se* rule required counsel to review the transcripts; and (2) counsel otherwise adequately investigated the validity of the prior convictions. *Barker v. Barrow*, 290 Ga. 711, 723 S.E.2d 905 (2012).

Sentence outside statutory range.

— Since the ten-year felony sentence, entered by the trial court and imposed upon defendant's convictions for possession of a controlled substance, possession of mari-

juana, and improper turn, was outside the statutory range in O.C.G.A. § 16-13-30(g), the sentence was void. Accordingly, the trial court had jurisdiction to resentence defendant at any time. *Simmons v. State*, No. A11A2093, 2012 Ga. App. LEXIS 320 (Mar. 22, 2012).

Search and Seizure

First-tier encounter. — Trial court did not err in denying the defendant's motion for new trial after the defendant was convicted of possession of cocaine because the court properly denied a motion to suppress the defendant's statement to a police officer that the defendant had a crack pipe in a pocket; the initial interaction between the officer and the defendant was a first-tier consensual encounter, and thus, the defendant was free to disregard the officer's questions and walk away. *Minor v. State*, 314 Ga. App. 253, 723 S.E.2d 702 (2012).

Pat-down search proper. — Trial court did not err in denying the defendant's motion to suppress drug evidence found on the defendant's person because the defendant's detention and pat-down was justified; a narcotics investigator was justified in believing that the investigator's safety was at risk based on the circumstances, including that officers were searching a house to execute an arrest warrant for a resident thereof, suspicion of drug activity at the house had been reported by neighbors, and the defendant, who was sitting up in bed, failed to comply with the investigator's repeated commands that the defendant display the defendant's hands, which were obscured under the covers. *Jones v. State*, 314 Ga. App. 247, 723 S.E.2d 697 (2012).

Plain feel doctrine. — Trial court did not err in denying the defendant's motion to suppress drug evidence found on the defendant's person because the seizure of the items in the defendant's pockets was lawful; under the plain feel doctrine, a narcotics investigator was entitled to seize the item, and the evidence was properly admitted; it was unnecessary for the investigator to conclusively identify what type of drug the defendant was carrying in order for the plain feel doctrine to make the seizure of the contraband lawful.

Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697 (2012).

Probable cause for arrest.

Trial court did not err in denying the defendant's motion to suppress evidence a police officer recovered from a rental car because the officer had reasonable grounds for detaining the defendant since the officer found the defendant and a friend in the parking lot of a closed business late at night, knew that several burglaries and thefts had occurred in the area recently, and observed that the defendant and the friend appeared to be nervous when the officer spoke with them; in the course of securing a firearm the officer saw a firearm in the center console of the rental car, the officer saw in plain view a digital scale with white residue, affording the officer probable cause to effect a custodial arrest of the defendant. *Culpepper v. State*, 312 Ga. App. 115, 717 S.E.2d 698 (2011).

Voluntary consent to search hotel room. — Trial court did not err in denying a motion to suppress evidence a police officer seized in a hotel room because the trial court was authorized to find that the state satisfied the state's burden of showing that the defendant's consent to enter the hotel room was voluntary and not the product of coercion, express or implied; the officer's testimony and the defendant's statement supported a finding that the officer requested and received the defendant's consent to enter the hotel room under circumstances that did not suggest either coercion or threat, and the trial court was authorized to infer that the defendant's consent to search was freely given in the calculated hope that the officer would not find the hidden contraband. *Liles v. State*, 311 Ga. App. 355, 716 S.E.2d 228 (2011).

Evidence seized from search based on valid arrest warrant. — Trial court did not err in denying the defendant's motion to suppress evidence found on the defendant's person because officers' search of a resident's house, where the officers found the defendant with a methamphetamine pipe, was legal since the police reasonably believed that the resident was in the house at the time of their entry based upon information from a neighbor

and the fact that the vehicle registered to the resident was parked in front of the house; because the police had a valid arrest warrant for the resident and limited their search to those areas where the resident could be located, the fact that the officers could have been motivated to enter the house to search for drugs was immaterial and did not render the entry and subsequent seizure of evidence from the defendant illegal. *Jones v. State*, 314 Ga. App. 247, 723 S.E.2d 697 (2012).

Trial court did not err in denying the defendant's motion to suppress evidence seized from a residence because an investigator's knowledge was not so remote that it made it unlikely that methamphetamine manufacturing activities would be found at the premises at the time the warrant was issued; the investigator's knowledge coincided with an officer's detection of a strong odor of ether at the premises, and the search warrant was both issued and executed on the same day that the odor was detected. *Newton v. State*, 313 Ga. App. 889, 723 S.E.2d 95 (2012).

Sufficient probable cause for issuance of search warrant. — Trial court did not err in denying the defendant's motion to suppress evidence seized from a residence because the totality of the circumstances presented probable cause supporting the magistrate's issuance of a search warrant of the premises; in addition to the strong odor of ether, a DEA-trained officer knew that the odor was indicative of a methamphetamine laboratory operation, there was a prior report that a methamphetamine laboratory was being operated on the premises, and a co-defendant had previously admitted to selling methamphetamine. *Newton v. State*, 313 Ga. App. 889, 723 S.E.2d 95 (2012).

Possession

Evidence sufficient to prove constructive, joint possession.

Evidence was sufficient to sustain the defendant's convictions for trafficking in cocaine, a violation of O.C.G.A. § 16-13-31(a)(1), and possession of ecstasy, a violation of O.C.G.A. § 16-13-30(a), although the defendant was neither in actual

possession of the contraband nor in control of the vehicle where the contraband was found because there was slight evidence of access, power, and intention to exercise control or dominion over the contraband and, therefore, excluding every other reasonable hypothesis save that of the defendant's guilt, as required under O.C.G.A. § 24-4-6, the question of constructive, joint possession was within the jury's discretion. The ecstasy pills were found in a prescription pill bottle belonging to the defendant, and the pill bottle was found in a bag with the cocaine. *Ferrell v. State*, 312 Ga. App. 122, 717 S.E.2d 705 (2011).

Actual or constructive possession.

Jury was authorized to infer that a defendant had been in possession of the bag of cocaine found on the ground next to the garbage dumpster based on an officer's testimony that the officer saw the defendant walk over to the dumpster and bend down next to the dumpster, and that no other items were found in the area where the defendant had bent down. *White v. State*, 313 Ga. App. 605, 722 S.E.2d 198 (2012).

Conviction not precluded when defendant connected with contraband.

Evidence from defendant's live-in girlfriend that a lunch bag and shoe box containing marijuana and scales belonged to the defendant was sufficient to prove that the defendant had sole constructive possession of the marijuana in violation of O.C.G.A. § 16-13-30(j), although both the defendant and the girlfriend had equal access to the marijuana. *Jefferson v. State*, 309 Ga. App. 861, 711 S.E.2d 412 (2011).

Evidence sufficient to support conviction of sale and trafficking in methamphetamine. — Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, supported the defendant's convictions for trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B) and 16-13-30(b). *Culajay v. State*, 309 Ga. App. 631, 710 S.E.2d 846 (2011).

Intent to possess not found. — State failed to establish that a defendant know-

ingly possessed khat with the knowledge that it contained cathinone as the state's expert witness testified that cathinone converted into cathine, another chemical that the defendant was not charged with possessing, after some period of time and that cathinone was undetectable without the use of scientific testing equipment. Additionally, the evidence showed that the khat in the case was harvested more than two days before its subsequent arrival in Georgia, the defendant testified that the defendant believed the chemical "went out" of the khat after two days, and there was no evidence that the defendant made any attempt to conceal the nature of the package in which the khat was found by, for example, evading police or showing false identification. *Mohamed v. State*, 314 Ga. App. 181, 723 S.E.2d 694 (2012).

Delivery and Distribution

Evidence sufficient for conviction of possession of cocaine with intent to distribute.

Evidence was sufficient to support the defendants' conviction for possession of cocaine with intent to distribute and marijuana with intent to distribute because: (1) police officers, while executing a search of the defendants' home, found crack cocaine, marijuana, a large number of plastic baggies, digital scales which had cocaine residue on them, a police scanner, and a handgun; (2) one of the defendants told an officer that all of the narcotics belonged to that defendant; (3) a police lieutenant, who was accepted by the trial court as an expert in the field of street level narcotics, opined, based on the large number of packaging supplies that were found, the large amounts of marijuana and crack cocaine that were found, as well as the handgun and police scanner that were found, that the defendants possessed the crack cocaine and marijuana for the purpose of distributing the drugs; and (4) evidence of one defendant's prior arrest and conviction for possession of cocaine with intent to distribute was introduced as a similar transaction. *Smith v. State*, 309 Ga. App. 889, 714 S.E.2d 593 (2011).

Evidence supported finding of intent to distribute marijuana.

Evidence that a defendant participated

in a plan for the delivery of a package containing 12 pounds of marijuana to a residence, along with digital scales, a marijuana grinder, and plastic baggies at the residence, and the defendant's admission that the marijuana was the defendant's, was sufficient to convict the defendant as a party to possession of marijuana with intent to distribute, trafficking in marijuana, and possession of marijuana, pursuant to O.C.G.A. § 16-2-20. *Salinas v. State*, 313 Ga. App. 720, 722 S.E.2d 432 (2012).

Similar transaction evidence properly admitted.

Trial court did not abuse the court's discretion in admitting similar transaction evidence that the defendant had sold cocaine to a confidential informant because the trial court expressly found that the similar transaction was admissible for the purpose of showing the defendant's intent, that the defendant had committed the similar transaction, and that there was sufficient connection between the similar transaction and the charged offense, possession of cocaine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). *Wright v. State*, 313 Ga. App. 829, 723 S.E.2d 59 (2012).

Trial court did not abuse its discretion in admitting similar transaction evidence because the evidence was sufficient for a rational trier of fact to have found the defendant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), even without the similar transaction evidence; defendant testified on direct examination that the defendant was on parole at the time of a traffic stop and had previously pled guilty to a drug charge, and the trial court properly instructed the jury to limit the jury's consideration of the similar transaction evidence to the appropriate purpose. *Wright v. State*, 313 Ga. App. 829, 723 S.E.2d 59 (2012).

Conflicting descriptions of the defendant in officer's report.

Even though an officer had not been qualified as an expert at trial, the officer's testimony was admissible to prove that the substance found in the defendant's pickup truck was marijuana because at the time of the defendant's arrest, the

officer who discovered the substance in the defendant's truck was certified to recognize the odor of marijuana and to identify and test marijuana, and the officer was subject to cross-examination by defense counsel; it was then for the jury to decide the weight and credibility the jury would give to the officer's testimony. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818 (2011).

Marijuana

Proof of weight. — To discharge the burden of proving that the weight of the marijuana exceeded one ounce, it is not necessary for the state to come forward with evidence of how many grams equal an ounce, even if the state's witnesses testify about the weight of the marijuana in terms of grams; when O.C.G.A. § 16-13-2(b) refers to an "ounce" of marijuana, the statute refers, as a matter of law, to an avoirdupois ounce, which is the equivalent of, when rounded up to the nearest hundredth of a gram, 28.35 grams, and the number of grams in an ounce is not something that varies from case to case or is open to reasonable dispute. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399 (2011).

Sufficiency of evidence.

Even though an officer had not been qualified as an expert at trial, the officer's testimony was admissible to prove that the substance found in the defendant's pickup truck was marijuana because at the time of the defendant's arrest, the officer who discovered the substance in the defendant's truck was certified to recognize the odor of marijuana and to identify and test marijuana, and the officer was subject to cross-examination by defense counsel; it was then for the jury to decide the weight and credibility the jury would give to the officer's testimony. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818 (2011).

Evidence was sufficient to sustain the defendant's conviction for possession of more than one ounce of marijuana in violation of O.C.G.A. §§ 16-13-2(b) and 16-13-30(j) because the state adduced evidence at trial that defendant had possession of 28.8 grams of marijuana, which was, by definition, more than one ounce of

marijuana. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399 (2011).

Evidence was sufficient to enable a rational trier of fact to find the defendant guilty beyond a reasonable doubt of malice murder, felony murder while in the commission of armed robbery, armed robbery, and conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., through a violation of O.C.G.A. § 16-13-30(j)(1), because: (1) the defendant and another buyer met with the victim and another seller where the defendant and the other buyer inspected marijuana which the victim and the other seller had for sale; (2) after some discussion about price, the victim told the defendant what the price was and that the defendant could take it or leave it; (3) the defendant said that the defendant would take it, pulled a gun from the defendant's waistband, and fatally shot the victim; and (4) there was conflicting testimony as to whether the defendant took the marijuana and ran away with the marijuana after shooting the victim. Darville v. State, 289 Ga. 698, 715 S.E.2d 110 (2011).

Trial court did not err in denying the defendant's motion for a directed verdict because the evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of distribution of marijuana, O.C.G.A. § 16-13-30(j), and possession of a firearm during the commission of a felony, O.C.G.A. § 16-11-106(b)(4); the testimony of a party to the transaction was corroborated by the observations of the detectives, the marijuana taken into evidence, the written statements of the parties regarding the defendant's involvement, and the defendant's own statement to a detective. Arnett v. State, 311 Ga. App. 811, 717 S.E.2d 312 (2011).

Constructive possession.

Trial court did not err in convicting the defendants of felony possession of more than one ounce of marijuana in violation of O.C.G.A. § 16-13-30(j)(1) because the trial court was authorized to conclude that the defendants had equal access to and joint constructive possession of the marijuana that was found in a minivan and that the defendants participated as parties to the drug possession offense; the

defendants, who were passengers in the back of the minivan, knew that marijuana was inside the minivan, and the driver informed an officer that the passengers were hiding marijuana inside the minivan. Dennis v. State, 313 Ga. App. 595, 722 S.E.2d 190 (2012).

Evidence sufficient for conviction. — Evidence was sufficient to support the defendant's conviction for possession with intent to distribute marijuana because the defendant was in possession of clear, plastic baggies, smaller baggies of suspected marijuana, a digital scale, and cash, and a police officer testified that in the officer's capacity as a marijuana tester for the county sheriff's office, the officer tested a total of 11 bags, containing approximately 190 grams of a substance that tested positive for marijuana; possession of a scale, baggies, and large amounts of currency along with drugs can constitute circumstantial evidence of intent to distribute. Hardaway v. State, 309 Ga. App. 432, 710 S.E.2d 634 (2011).

Evidence was sufficient to permit a rational trier of fact to find the defendant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute because a chemist testified that in the chemist's opinion, the substance found in the defendant's pocket consisted of cocaine; a drug task force officer testified about a field test indicating the presence of cocaine. White v. State, 310 Ga. App. 386, 714 S.E.2d 31 (2011).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal as to the charge of possession of methamphetamine because the trier of fact was presented with sufficient evidence to determine beyond a reasonable doubt that the defendant was guilty of possessing methamphetamine since the court was authorized to conclude that the defendant either dropped or discarded the methamphetamine during the struggle with police when the defendant fled from a traffic stop; the evidence included the officer's testimony that the officer saw the defendant tuck something into a waistband while in a car, the defendant's flight from law enforcement after being stopped for a minor traffic offense, the proximity of the methamphetamine to the location

where the defendant fell to the ground, and the defendant's statement to the officer that the defendant had exchanged drugs for use of the car. Bone v. State, 311 Ga. App. 390, 715 S.E.2d 789 (2011).

Evidence was sufficient to authorize the defendant's conviction for possessing more than one ounce of marijuana because the defendant was presumed to have exclusive possession and control of the marijuana that a police officer found in the car the defendant was driving; as the factfinder, the jury was entitled to reject the testimony of the defendant's friend that the marijuana was the friend's and to determine that the presumption of the defendant's possession of the marijuana had not been rebutted. Nix v. State, 312 Ga. App. 43, 717 S.E.2d 550 (2011).

Evidence sufficient to sustain conviction for possession with intent to distribute marijuana.

Evidence was sufficient to find the defendant guilty of possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j)(1), and possession of marijuana with intent to distribute within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), because it appeared that the jury accepted that version of the events most unfavorable to the defendant after hearing all of the evidence and resolving the credibility of all of the witnesses, and the jury was solely authorized to make such determinations. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818 (2011).

Evidence was sufficient to support the defendant's conviction for possession with intent to distribute marijuana as over a pound of marijuana was found in the defendant's vehicle, and the marijuana was found with a trafficking amount of 3,4 methylenedioxymethamphetamine (MDMA) and a loaded weapon, constituting evidence of involvement in the drug trade. Jackson v. State, 314 Ga. App. 272, 724 S.E.2d 9 (2012).

Jury instructions. — Trial court's instructions on "mere association" and "mere presence" with regard to charging a defendant as a party to a crime under O.C.G.A. § 16-2-20(a) were misstatements of the law and also directly conflicted with other closely related instruc-

tions, and were harmful error requiring reversal of the defendant's convictions for possession of marijuana with intent to

distribute in violation of O.C.G.A. § 16-13-30(j)(1). Able v. State, 312 Ga. App. 252, 718 S.E.2d 96 (2011).

16-13-30. (For effective date, see note) Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties.

(a) Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his or her control any controlled substance.

(b) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance.

(c) Except as otherwise provided, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule I or a narcotic drug in Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than one gram of a solid substance, less than one milliliter of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than one gram, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least one gram but less than four grams of a solid substance, at least one milliliter but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least one gram but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3)(A) Except as provided in subparagraph (B) of this paragraph, if the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(B) This paragraph shall not apply to morphine, heroin, or opium or any salt, isomer, or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these substances.

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years

nor more than 30 years. Upon conviction of a second or subsequent offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense; provided, however, that the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(e) Any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than two grams of a solid substance, less than two milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance, at least two milliliters but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3) If the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code section with respect to a controlled substance in Schedule I or II or subsection (i) of this Code section, such person shall be punished by imprisonment for a term not to exceed twice the length of the sentence applicable to the particular crime.

(g) Except as provided in subsection (l) of this Code section, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than three years. Upon conviction of a third or subsequent offense, he or she shall be imprisoned for not less than one year nor more than five years.

(h) Any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(i)(1) Except as authorized by this article, it is unlawful for any person to possess or have under his or her control a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than two years.

(2) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(j)(1) It shall be unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana.

(2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code Section 16-13-2, any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years or by a fine not to exceed \$20,000.00, or both.

(l)(1) Any person who violates subsection (a) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than 15 years.

(2) Any person who violates subsection (b) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense, but that subsection and the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(m) As used in this Code section, the term "solid substance" means tablets, pills, capsules, caplets, or any variant of such items. (Code

1933, § 79A-811, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1975, p. 1112, § 1; Ga. L. 1979, p. 1258, § 1; Ga. L. 1980, p. 432, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1990, p. 992, § 1; Ga. L. 1992, p. 2041, § 1; Ga. L. 1996, p. 1023, §§ 1.1, 2; Ga. L. 1997, p. 1311, § 4; Ga. L. 2012, p. 899, §§ 3-7A, 3-7B/HB 1176.)

Delayed effective date. — This Code section, as set forth above, is effective July 1, 2013. For version of this Code section effective from July 1, 2012, until July 1, 2013, see the preceding version of this Code section. For version of this Code section effective beginning July 1, 2014, see the third version of this Code section.

The 2012 amendment, effective July 1, 2013, inserted “or her” in subsection (a); in subsection (c), substituted “as follows:” for “by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall be imprisoned for not less than five years nor more than 30 years.”; added paragraphs (c)(1) through (c)(3); in subsection (e), substituted “as follows:” for “by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall be punished by imprisonment for not less than five years nor more than 30 years.”; added paragraphs (e)(1) through (e)(3); substituted the present provisions of subsection (f) for “Reserved.”; in subsection (g), in the first sentence, substituted “Except as provided in subsection (l) of this Code section, any” for “Any” and substituted “three years” for “five years”, and, in the second sentence, substituted “third or subsequent offense, he or she shall” for “second or subsequent offense, he shall” and substituted “five years” for “ten years”; designated former subsection (i) as present paragraph (i)(1); in paragraph (i)(1), in the first sentence, substituted “or her control” for “his control, manufacture, deliver, distribute, dispense, administer,

purchase, sell, or possess with intent to distribute”, in the second sentence, substituted “paragraph” for “subsection” and substituted “two years” for “ten years”; added paragraph (i)(2); in paragraph (j)(1), substituted “It shall be” for “It is” at the beginning, and inserted “or her” near the middle; in paragraph (l)(1), substituted “one year” for “two years” in the first sentence and deleted the former second sentence, which read: “Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than five years nor more than 30 years.”; and added subsection (m). See editor’s note for applicability.

Editor’s notes. — Code Section 16-13-30 is set out three times in this Code. The first version is effective until July 1, 2013, the second version is effective until July 1, 2014, and the third version becomes effective on that date.

Ga. L. 2012, p. 899, § 9-1(b)(1)/HB 1176, not codified by the General Assembly, provides: “Section 3-7B of this Act shall become effective on July 1, 2013, at which time, Section 3-7A of this Act shall be superceded and repealed in its entirety, and Section 3-7B of this Act shall apply to offenses which occur on or after July 1, 2013. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act.”

16-13-30. (Effective July 1, 2014. See note.) Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties.

(a) Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his or her control any controlled substance.

(b) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance.

(c) Except as otherwise provided, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule I or a narcotic drug in Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than one gram of a solid substance, less than one milliliter of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than one gram, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least one gram but less than four grams of a solid substance, at least one milliliter but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least one gram but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3)(A) Except as provided in subparagraph (B) of this paragraph, if the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(B) This paragraph shall not apply to morphine, heroin, or opium or any salt, isomer, or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these substances.

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense; provided, however, that the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(e) Any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

- (1) If the aggregate weight, including any mixture, is less than two grams of a solid substance, less than two milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not less than one nor more than three years;
- (2) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance, at least two milliliters but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and
- (3) If the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.
- (f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code section with respect to a controlled substance in Schedule I or II or subsection (i) of this Code section, such person shall be punished by imprisonment for a term not to exceed twice the length of the sentence applicable to the particular crime.
- (g) Except as provided in subsection (l) of this Code section, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than three years. Upon conviction of a third or subsequent offense, he or she shall be imprisoned for not less than one year nor more than five years.
- (h) Any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.
- (i)(1) Except as authorized by this article, it is unlawful for any person to possess or have under his or her control a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than two years.
- (2) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute a counterfeit substance. Any person who violates this paragraph shall be guilty of

a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(j)(1) It shall be unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana.

(2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code Section 16-13-2, any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years or by a fine not to exceed \$20,000.00, or both.

(l)(1) Any person who violates subsection (a) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(A) If the aggregate weight, including any mixture, is less than two grams of a solid substance of flunitrazepam, less than two milliliters of liquid flunitrazepam, or if flunitrazepam is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not less than one nor more than three years;

(B) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance of flunitrazepam, at lease two milliliters but less than four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(C) If the aggregate weight, including any mixture, is at least four grams of a solid substance of flunitrazepam, at least four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least four grams, by imprisonment for not less than one nor more than 15 years.

(2) Any person who violates subsection (b) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense, but that subsection and the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(m) As used in this Code section, the term "solid substance" means tablets, pills, capsules, caplets, or any variant of such items. (Code 1933, § 79A-811, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1975, p. 1112, § 1; Ga. L. 1979, p. 1258, § 1; Ga. L. 1980, p. 432, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1990, p. 992, § 1; Ga. L. 1992, p. 2041, § 1; Ga. L. 1996, p. 1023, §§ 1.1, 2; Ga. L. 1997, p. 1311, § 4; Ga. L. 2012, p. 899, §§ 3-7A, 3-7B, 3-7C/HB 1176.)

Delayed effective date. — This Code section, as set forth above, is effective July 1, 2014. For version of this Code Section effective from July 1, 2012, until July 1, 2013, see the first version of this Code section. For version of this Code Section effective beginning July 1, 2013, see the second version of this Code section.

The 2012 amendment, effective July 1, 2014, inserted "or her" in subsection (a); in subsection (c), substituted "as follows:" for "by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall be imprisoned for not less than five years nor more than 30 years.;" added paragraphs (c)(1) through (c)(3); in subsection (e), substituted "as follows:" for "by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall be punished by imprisonment for not less than five years nor more than 30 years.;" added paragraphs (e)(1) through (e)(3); substituted the present provisions of subsection (f) for "Reserved."; in subsection (g), in the first sentence, substituted "Except as provided in subsection (l) of this Code section, any" for "Any" and substituted "three years" for "five years", and, in the second sentence, substituted "third or subsequent offense, he or she shall" for "second or subsequent offense, he shall"

and substituted "five years" for "ten years"; designated former subsection (i) as present paragraph (i)(1); in paragraph (i)(1), in the first sentence, substituted "or her control" for "his control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute", in the second sentence, substituted "paragraph" for "subsection" and substituted "two years" for "ten years"; added paragraph (i)(2); in paragraph (j)(1), substituted "It shall be" for "It is", and inserted "or her" near the middle; in paragraph (l)(1), substituted "as follows:" for "by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than five years nor more than 30 years.;" added subparagraphs (l)(1)(A) through (l)(1)(C); and added subsection (m). See editor's note for applicability.

Editor's notes. — Code Section 16-13-30 is set out three times in this Code. The first version is effective until July 1, 2013, the second version is effective until July 1, 2014, and the third version becomes effective on that date.

Ga. L. 2012, p. 899, § 9-1(b)(2)/HB 1176, not codified by the General Assembly, provides: "Section 3-7C of this Act shall become effective on July 1, 2014, at

which time, Section 3-7B of this Act shall be superceded and repealed in its entirety, and Section 3-7C of this Act shall apply to offenses which occur on or after July 1, 2014. Any offense occurring before July 1, 2014, shall be governed by the statute in effect at the time of such offense and shall

be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

16-13-31. Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine; penalties.

(a)(1) Any person who knowingly sells, manufactures, delivers, or brings into this state or who is knowingly in possession of 28 grams or more of cocaine or of any mixture with a purity of 10 percent or more of cocaine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in cocaine and, upon conviction thereof, shall be punished as follows:

(A) If the quantity of the cocaine or the mixture involved is 28 grams or more, but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of \$200,000.00;

(B) If the quantity of the cocaine or the mixture involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of \$300,000.00; and

(C) If the quantity of the cocaine or the mixture involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

(2) Any person who knowingly sells, manufactures, delivers, or brings into this state or who is knowingly in possession of any mixture with a purity of less than 10 percent of cocaine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in cocaine if the total weight of the mixture multiplied by the percentage of cocaine contained in the mixture exceeds any of the quantities of cocaine specified in paragraph (1) of this subsection. Upon conviction thereof, such person shall be punished as provided in paragraph (1) of this subsection depending upon the quantity of cocaine such person is charged with knowingly selling, manufacturing, delivering, or bringing into this state or knowingly possessing.

(b) Any person who knowingly sells, manufactures, delivers, brings into this state, or has possession of 4 grams or more of any morphine or opium or any salt, isomer, or salt of an isomer thereof, including heroin, as described in Schedules I and II, or 4 grams or more of any mixture containing any such substance in violation of this article commits the

felony offense of trafficking in illegal drugs and, upon conviction thereof, shall be punished as follows:

- (1) If the quantity of such substances involved is 4 grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of \$50,000.00;
 - (2) If the quantity of such substances involved is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of \$100,000.00; and
 - (3) If the quantity of such substances involved is 28 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of \$500,000.00.
- (c) Any person who knowingly sells, manufactures, grows, delivers, brings into this state, or has possession of a quantity of marijuana exceeding 10 pounds commits the offense of trafficking in marijuana and, upon conviction thereof, shall be punished as follows:
- (1) If the quantity of marijuana involved is in excess of 10 pounds, but less than 2,000 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of \$100,000.00;
 - (2) If the quantity of marijuana involved is 2,000 pounds or more, but less than 10,000 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of seven years and shall pay a fine of \$250,000.00; and
 - (3) If the quantity of marijuana involved is 10,000 pounds or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of \$1 million.
- (d) Any person who knowingly sells, manufactures, delivers, or brings into this state 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in paragraph (6) of Code Section 16-13-25, in violation of this article commits the felony offense of trafficking in methaqualone and, upon conviction thereof, shall be punished as follows:

- (1) If the quantity of the methaqualone or the mixture involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of \$50,000.00; and
- (2) If the quantity of the methaqualone or the mixture involved is 400 grams or more, the person shall be sentenced to a mandatory

minimum term of imprisonment of 15 years and shall pay a fine of \$250,000.00.

(e) Any person who knowingly sells, delivers, or brings into this state or has possession of 28 grams or more of methamphetamine, amphetamine, or any mixture containing either methamphetamine or amphetamine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in methamphetamine or amphetamine and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 28 grams or more, but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of \$200,000.00;

(2) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of \$300,000.00; and

(3) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

(f) Any person who knowingly manufactures methamphetamine, amphetamine, or any mixture containing either methamphetamine or amphetamine, as described in Schedule II, in violation of this article commits the felony offense of trafficking methamphetamine or amphetamine and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of \$200,000.00;

(2) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of \$300,000.00; and

(3) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

(g)(1) Except as provided in paragraph (2) of this subsection and notwithstanding Code Section 16-13-2, with respect to any person

who is found to have violated this Code section, adjudication of guilt or imposition of sentence shall not be suspended, probated, deferred, or withheld prior to serving the mandatory minimum term of imprisonment prescribed by this Code section.

(2) The district attorney may move the sentencing court to impose a reduced or suspended sentence upon any person who is convicted of a violation of this Code section and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, coconspirators, or principals. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may impose a reduced or suspended sentence if he finds that the defendant has rendered such substantial assistance.

(h) Any person who violates any provision of this Code section shall be punished as provided for in the applicable mandatory minimum punishment and for not more than 30 years of imprisonment and by a fine not to exceed \$1 million. (Ga. L. 1980, p. 432, § 1; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2215, § 1; Ga. L. 1983, p. 620, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1985, p. 552, § 1; Ga. L. 1986, p. 10, § 16; Ga. L. 1986, p. 397, § 1; Ga. L. 1988, p. 420, § 2; Ga. L. 1989, p. 1594, § 1; Ga. L. 1992, p. 2106, § 1; Ga. L. 1994, p. 169, § 5.1; Ga. L. 1997, p. 1311, § 5; Ga. L. 2003, p. 177, § 4; Ga. L. 2003, p. 257, § 1; Ga. L. 2012, p. 899, § 3-8/HB 1176.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of subsection (h) for the former provisions, which read: "Any person who violates any provision of this Code section in regard to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine shall be punished by imprisonment for not less than five years nor more than 30 years and by a fine not to exceed \$1 million." See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the Gen-

eral Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

POSSESSION

QUANTITY OF CONTRABAND

SUFFICIENCY OF EVIDENCE

SENTENCING

General Consideration

Suppression motion properly denied.

Trial court did not err in denying the defendant's motion to suppress the cocaine that was discovered during a search of the rental vehicle the defendant was driving based on evidence from the officer that the defendant consented to the search, although the defendant testified that the defendant did not consent and that the officer just announced that the officer was going to search. *Morgan v. State*, 311 Ga. App. 740, 716 S.E.2d 821 (2011).

Cited in *Foster v. State*, No. A11A2312, 2012 Ga. App. LEXIS 249 (Mar. 7, 2012).

Possession

Evidence sufficient to prove constructive, joint possession.

Because the defendant's brother was prosecuted in federal court for possession of a cocaine mixture in an apartment, the state was permitted to prove the state's case against the defendant by proof of joint constructive possession; the state did not prosecute the brother for the brother's joint constructive possession of the cocaine mixture in the apartment, but the United States did prosecute the brother in federal court. *Holiman v. State*, 313 Ga. App. 76, 720 S.E.2d 363 (2011).

Driver of automobile as possessor.

Defendant failed to rebut the presumption of possession of bricks of cocaine found in the defendant's pickup truck following a road block stop because the defendant claimed that the truck was the defendant's, the defendant asserted ownership over the contents of the truck, the defendant was the sole occupant of the truck, and there was no showing that others had access to the truck bed. *Maldonado v. State*, 313 Ga. App. 511, 722 S.E.2d 123 (2012).

Quantity of Contraband

Defendant's knowledge of quantity.

Trial court's instruction requiring the jury to find that a defendant who was charged with trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) was required to have knowingly possessed 28

grams of cocaine or more sufficiently charged that the jury had to find that the defendant was aware of the weight of the cocaine the defendant possessed. Further, any error in the charge was harmless, because the defendant was shown to have possessed 106 grams of cocaine and to have been familiar with the weight of cocaine from the defendant's past dealings with cocaine. *Harrison v. State*, 309 Ga. App. 454, 711 S.E.2d 35 (2011).

Evidence that the defendant took delivery of a large package of marijuana from an investigator dressed as a postal worker, that the defendant said the defendant was expecting the package and signed for the package using a false name and then took possession of the package was sufficient to support the defendant's conviction for trafficking in marijuana in violation of O.C.G.A. § 16-13-31(c). Defendant's knowledge of the precise weight of the drugs in the defendant's possession was not required to sustain the defendant's drug trafficking conviction, and the trial court did not err in so instructing the jury. *Wilson v. State*, 312 Ga. App. 166, 718 S.E.2d 31 (2011).

Sufficiency of Evidence

Defendant was properly convicted for trafficking in marijuana, etc.

Evidence that a defendant participated in a plan for the delivery of a package containing 12 pounds of marijuana to a residence, along with digital scales, a marijuana grinder, and plastic baggies at the residence, and the defendant's admission that the marijuana was the defendant's, was sufficient to convict the defendant as a party to possession of marijuana with intent to distribute, trafficking in marijuana, and possession of marijuana, pursuant to O.C.G.A. § 16-2-20. *Salinas v. State*, 313 Ga. App. 720, 722 S.E.2d 432 (2012).

Conspiracy to traffic in drugs.

Evidence was sufficient to sustain the defendant's conviction for conspiracy to traffic methamphetamine over 400 grams in violation of O.C.G.A. §§ 16-4-8 and 16-13-31(e)(3) because an accomplice testified that the defendant supplied the accomplice with several pounds of methamphetamine, and that testimony was amply

corroborated by other evidence in the record; the defendant's translator testified that the translator retrieved \$15,000 from the accomplice as payment for fronted methamphetamine, police officers recovered \$15,000 in cash from the translator upon leaving the accomplice's residence, and there were recorded conversations between the accomplice, the defendant, and the translator in which they discussed methamphetamine transactions. Melesa v. State, 314 Ga. App. 306, 724 S.E.2d 30 (2012).

Evidence sufficient to support conviction for cocaine trafficking.

Trial court did not err in convicting the defendant of trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) because the jury was authorized to find that the defendant was in joint constructive possession of the cocaine and was a party to the crime pursuant to O.C.G.A. § 16-2-20(a) and (b)(3), and the trial evidence authorized the jury to find that the only reasonable hypothesis pointed to the defendant's guilt of the drug offense; the evidence showed that the defendant participated and intentionally aided in the commission of the drug trafficking offense by driving the codefendants and the cocaine to the pre-arranged location for the transaction, warning the codefendants that the principal agent was a police officer and taking possession of the funds used for the transaction. Valdez v. State, 310 Ga. App. 274, 712 S.E.2d 656 (2011).

Evidence was sufficient to sustain the defendant's convictions for trafficking in cocaine, a violation of O.C.G.A. § 16-13-31(a)(1), and possession of ecstasy, a violation of O.C.G.A. § 16-13-30(a), although the defendant was neither in actual possession of the contraband nor in control of the vehicle where the contraband was found because there was slight evidence of access, power, and intention to exercise control or dominion over the contraband and, therefore, excluding every other reasonable hypothesis save that of defendant's guilt, as required under O.C.G.A. § 24-4-6, the question of constructive, joint possession was within the jury's discretion. The ecstasy pills were found in a prescription pill bottle belonging to the defendant, and the pill bottle was found in a bag with the

cocaine. Ferrell v. State, 312 Ga. App. 122, 717 S.E.2d 705 (2011).

Because the state introduced sufficient corroborating evidence of an accomplice's testimony that the drugs found in the basement of the house belonged to the defendant because the record showed the presence of all factors required to authorize admission of the similar transaction evidence, and because there was sufficient evidence of probable cause for a search warrant even without the representation that the affiant saw the informant buy drugs from the defendant, the evidence was sufficient to convict the defendant of trafficking in cocaine. Dickerson v. State, 312 Ga. App. 320, 718 S.E.2d 564 (2011).

Defendant was properly convicted of trafficking in 400 grams or more of a mixture containing cocaine, O.C.G.A. § 16-13-31(a)(1)(C), because the evidence tended to show a connection between the defendant and the contraband sufficient to prove the knowingly shared with the defendant's brother the power and intention to exercise dominion or control over the mixture; there was evidence that the cocaine mixture was in plain view and visible from the common sitting area of the apartment and that defendant was in the apartment alone for an extended period of time, and there was evidence of two similar transactions, which tended to show a course of conduct and intent to possess and distribute cocaine, possess large amounts of currency, and in one of the similar transactions, use a black bag to transport drug-related items. Holiman v. State, 313 Ga. App. 76, 720 S.E.2d 363 (2011).

Defendant's conviction for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a)(1), was supported by sufficient evidence under O.C.G.A. §§ 16-2-20(b)(3) and 24-4-8 because both the defendant and the codefendant made statements regarding the defendant's involvement in the criminal activity, and the police observed the defendant's actions; there was evidence that the defendant was an active participant and a party to the trafficking offense. Martinez v. State, No. A11A2066, 2012 Ga. App. LEXIS 232 (Mar. 2, 2012).

Evidence was sufficient to sustain the defendant's conviction for trafficking in

cocaine because the state presented sufficient evidence from which the jury could find that the defendant possessed the cocaine the defendant retrieved from the trunk of a car; the defendant retrieved the drugs from the trunk of the car and had the drugs in hand when the police arrested the defendant. Raines v. State, 313 Ga. App. 879, 722 S.E.2d 779 (2012).

Evidence sufficient to support conviction of trafficking in methamphetamine.

Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, supported the defendant's convictions for trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B) and 16-13-30(b). Culajay v. State, 309 Ga. App. 631, 710 S.E.2d 846 (2011).

Evidence insufficient to sustain conviction for trafficking in cocaine.

Evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), because the equal access doctrine was not applicable since the evidence of the defendant's possession of the drugs included more than the defendant's mere possession of the car where the drugs were discovered; because the defendant's possession of the methamphetamine found inside the trunk of the car was established by evidence besides the defendant's mere ownership, use, or possession of the car, including the defendant's statement that the defendant was transporting the methamphetamine, the issue of whether the drugs belonged to defendant or one of the other occupants was for the jury's

determination. Arroyo v. State, 309 Ga. App. 494, 711 S.E.2d 60 (2011).

Evidence held sufficient.

Evidence was sufficient to authorize a defendant's conviction for trafficking in cocaine under O.C.G.A. § 16-13-31(a)(1) as the evidence showed that, during a traffic stop, a sheriff's deputy found a package containing cocaine in a car owned and driven by the defendant. While the defendant argued that the defendant was entitled to a directed verdict of acquittal under the equal access rule because the sole evidence of the defendant's possession of the cocaine was the defendant's ownership and possession of the car and because others had equal access to the part of the car where the cocaine was found, the equal access rule was inapplicable as the state charged all three occupants of the car with possession of cocaine; thus, the state was entitled to rely on the presumption to show that the defendant, as the car's owner and driver, had possession and control over the cocaine. Warren v. State, 314 Ga. App. 477, 724 S.E.2d 404 (2012).

Sentencing

Separate sentences for drug trafficking offenses. — Trial court did not err under O.C.G.A. §§ 16-1-6(2) and 16-1-7(a)(1) by sentencing the defendant separately for trafficking in methamphetamine, in violation of O.C.G.A. § 16-13-31, and trafficking in ecstasy, in violation of O.C.G.A. § 16-13-31.1, when the substance which was found in the defendant's vehicle tested positive for both methamphetamine and ecstasy as there was no evidence that chemical compounds or elements were shared between the drugs. Ahmad v. State, 312 Ga. App. 703, 719 S.E.2d 563 (2011).

16-13-31.1. Trafficking in ecstasy; penalties.

JUDICIAL DECISIONS

Sufficient evidence to support conviction for trafficking MDMA.

Sufficient evidence supported the defendant's conviction for trafficking in 3,4 methylenedioxymethamphetamine (MDMA, or "ecstasy") as the jury was

authorized to find the defendant knew that a codefendant had possession of marijuana and ecstasy, and the evidence showed that the defendant allowed the codefendant to place the drugs in the trunk of the defendant's vehicle and

knowingly transported the drugs in the vehicle. *Jackson v. State*, 314 Ga. App. 272, 724 S.E.2d 9 (2012).

Imposition of separate trafficking sentences proper for methamphetamine and ecstasy. — Trial court did not err under O.C.G.A. §§ 16-1-6(2) and 16-1-7(a)(1) by sentencing the defendant separately for trafficking in methamphet-

amine, in violation of O.C.G.A. § 16-13-31, and trafficking in ecstasy, in violation of O.C.G.A. § 16-13-31.1, when the substance which was found in the defendant's vehicle tested positive for both methamphetamine and ecstasy as there was no evidence that chemical compounds or elements were shared between the drugs. *Ahmad v. State*, 312 Ga. App. 703, 719 S.E.2d 563 (2011).

16-13-32.5. Manufacturing, distributing, dispensing, or possessing controlled substance, marijuana, or counterfeit substance near park or housing project; nonmerger of offenses; evidence of location and boundaries; posting; affirmative defenses.

JUDICIAL DECISIONS

Evidence sufficient for conviction.

Evidence was sufficient to find the defendant guilty of possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j)(1), and possession of marijuana with intent to distribute within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), because it appeared that the jury accepted that version of the events most unfavorable to the defendant after hearing all of the evidence and resolving the credibility of all of the witnesses, and the jury was solely authorized to make such determinations. *Bass v. State*, 309 Ga. App. 601, 710 S.E.2d 818 (2011).

Evidence was sufficient to sustain a defendant's conviction for possession of a controlled substance with intent to distribute within 1,000 feet of a public housing project as evidence that the public housing complex where drugs were found in the apartment of the defendant's girlfriend was under the jurisdiction of a housing authority, pursuant to O.C.G.A. §§ 8-3-1 and 8-3-2, was twice presented at trial, the evidence showed that the location consisted of dwelling units, and that these dwelling units were occupied by low and moderate income families. *Robinson v. State*, No. A11A2039, 2012 Ga. App. LEXIS 233 (Mar. 2, 2012).

16-13-41. Prescriptions.

JUDICIAL DECISIONS

Evidence sufficient for showing dependency created. — Evidence that the course of treatment the defendant, a doctor, prescribed for the victim would create a physiological dependence in any patient, even one who did not have a prior addic-

tive tendency, and that the victim exhibited signs of drug abuse that would have been recognized by a treating physician was sufficient to support conviction under O.C.G.A. § 16-13-41(f). *Chua v. State*, 289 Ga. 220, 710 S.E.2d 540 (2011).

16-13-42. Unauthorized distribution and dispensation; refusal or failure to keep records; refusal to permit inspection; unlawfully maintaining structure or place; penalty.

JUDICIAL DECISIONS

Evidence insufficient that home was used for drug purposes.—Conviction for knowingly keeping a dwelling place for using controlled substances was not supported by sufficient evidence since the only evidence was that the building in

question was defendant's home; there was no evidence one of the purposes of the home was to provide defendant a place to use and keep controlled substances. Chua v. State, 289 Ga. 220, 710 S.E.2d 540 (2011).

16-13-49. Forfeitures.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
PROCEDURE

General Consideration

Complaint sufficient.

Because the forfeiture statute declared as contraband property that was, directly or indirectly, used or intended for use in any manner to facilitate a drug violation, the complaint made out a *prima facie* case for civil forfeiture of the property as contraband; the complaint alleged that items were seized in an investigation involving the conspiracy to traffic cocaine and marijuana, which were violations of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482 (2012).

State's burden of proof.

Because the case was an *in rem* proceeding for property valued at more than \$25,000, the pleading requirement of O.C.G.A. § 16-13-49(o) applied, not O.C.G.A. § 16-13-49(n); the state's statutory burden, in part, was to allege the essential elements of the violation, not the essential facts supporting the alleged offense. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482 (2012).

Innocent ownership not proven.

Trial court erred in denying the state's *in rem* forfeiture action and adjudicating a husband an innocent owner of a vehicle

the state seized when his wife was arrested for possessing methamphetamine and other crimes because the husband lacked title to the car, and any other interest he could have had was in community with the wife since the husband assigned his interest in the car to the wife and the certificate itself listed the purchase date as one day before the seizure; thus, pursuant to the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-32, the assignment to the wife was completed one day before the seizure, and the husband had no ownership interest in the vehicle on that day. State v. Centers, 310 Ga. App. 413, 713 S.E.2d 479 (2011).

Procedure

Contents of answer.

Trial court did not err by striking appellants answer to the state's complaint for forfeiture and dismissing appellants' claims as to some items because the entries did not contain sufficient information to satisfy the pleading requirement under O.C.G.A. § 16-13-49(o)(3)(D); for those entries there was a blank or no information describing appellants' property interest, and certain additional items were listed with only vague information. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482 (2012).

Trial court erred in striking appellants' answer to the state's complaint for forfeiture as to certain items because the information appellants provided in the answer was sufficient to plead an interest in the property

under O.C.G.A. § 16-13-49(o)(3)(D); appellants' ownership interest was described with the name of the transferor and a year of purchase. *Arreola-Soto v. State of Ga.*, 314 Ga. App. 165, 723 S.E.2d 482 (2012).

PART 2

ELECTRONIC DATA BASE OF PRESCRIPTION INFORMATION

Law reviews. — For article on the 2011 enactment of this part, see 28 Ga. St. U. L. Rev. 269 (2011).

16-13-57. Program to record prescription information into electronic database; administration and oversight.

Law reviews. — For article, "Crimes and Offenses: Controlled Substances," see 28 Ga. St. U. L. Rev. 269 (2011).

16-13-58. Funds for development and maintenance of program; granting of funds to dispensers.

Law reviews. — For article, "Crimes and Offenses: Controlled Substances," see 28 Ga. St. U. L. Rev. 269 (2011).

16-13-59. Information to include for each Schedule II, III, IV, or V controlled substance prescription; compliance.

Law reviews. — For article, "Crimes and Offenses: Controlled Substances," see 28 Ga. St. U. L. Rev. 269 (2011).

16-13-64. Violations; criminal penalties; civil damages.

Law reviews. — For article, "Crimes and Offenses: Controlled Substances," see 28 Ga. St. U. L. Rev. 269 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 16-13-64 are offenses for which finger-

printing is required. 2011 Op. Att'y Gen. No. 11-5.

ARTICLE 3
DANGEROUS DRUGS

16-13-71. “Dangerous drug” defined.

(a) A “dangerous drug” means any drug other than a drug contained in any schedule of Article 2 of this chapter, which, under the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040 (1938)), 21 U.S.C. Section 301, et seq., as amended, may be dispensed only upon prescription. In any civil or criminal action or other proceedings, a certification from the Food and Drug Administration of the United States Department of Health and Human Services attesting to the fact that a drug other than a drug contained in any schedule of Article 2 of this chapter involved in the action or proceeding is a dangerous drug that federal law prohibits dispensing of without a prescription pursuant to the Federal Food, Drug, and Cosmetic Act shall be admissible as *prima-facie* proof that such drug is a “dangerous drug.”

(b) In addition to subsection (a) of this Code section, a “dangerous drug” means any other drug or substance declared by the General Assembly to be a dangerous drug; to include any of the following drugs, chemicals, or substances; salts, isomers, esters, ethers, or derivatives of such drugs, chemicals, or substances which have essentially the same pharmacological action; all other salts, isomers, esters, ethers, and compounds of such drugs, chemicals, or substances unless specifically exempted and the following devices, identified as “dangerous drugs”:

- (.03) Abacavir;
- (.035) Abarelix;
- (.037) Abatacept;
- (.04) Abciximab;
- (.043) abobotulinumtoxinA;
- (.045) Acamprostate;
- (.05) Acarbose;
- (.1) Acebutolol;
- (1) Acecarbromal;
- (2) Acenocoumarol;
- (3) Acetazolamide;
- (3.5) Reserved;
- (4) Acetohexamide;

- (4.1) Aceto-hydroxamic acid;
- (5) Acetophenazine;
- (6) Acetosulfone;
- (7) Acetyl sulfamethoxypyridazine;
- (8) Acetyl sulfisoxazole;
- (9) Acetylcarbromal;
- (10) Acetylcholine;
- (11) Acetylcysteine;
- (12) Acetyldigitoxin;
- (12.1) Acitretin;
- (13) Acrisorcin;
- (13.3) Acrivastine;
- (13.5) Acyclovir;
- (13.53) Adalimumab;
- (13.55) Adapalene;
- (13.6) Adenosine;
- (14) Adenosine 5-monophosphate;
- (14.5) Adenovirus;
- (15) Adenylic acid;
- (16) Adiphenine hydrochloride;
- (17) Adrenal cortex extracts;
- (17.3) Aflibercept;
- (17.5) Albendazole;
- (17.7) Albiraterone;
- (18) Albumin, normal human serum;
- (18.1) Albuterol;
- (19) Albutonium;
- (19.3) Alcaftadine;
- (19.5) Alclometasone dipropionate;
- (19.6) Alendronate;
- (19.65) Alfuzosin;

- (19.7) Alglucerase;
- (19.75) Alglucosidase alfa;
- (19.77) Aliskiren;
- (19.8) Alitretinoin;
- (20) Alkaverir;
- (21) Alkavervir;
- (21.1) Alkyl nitrites;
- (22) Allopurinol;
- (22.2) Almotriptan;
- (22.5) Alosetron;
- (23) Alpha amylase;
- (23.1) Alprostadol;
- (24) Alseroxylon;
- (24.1) Altenodol;
- (24.6) Altretamine;
- (25) Aluminum nicotinate;
- (26) Alverine;
- (26.5) Alvimopan;
- (27) Amantadine;
- (28) Ambenonium chloride;
- (28.5) Ambrisentan;
- (29) Ambrosiacae follens;
- (30) Amcinonide;
- (30.1) Amdinocillin;
- (30.5) Amifostine;
- (31) Amikacin;
- (31.1) Amiloride;
- (32) Aminacrine;
- (33) 4-amino-N-methyl-pteroylglutamic acid;
- (34) Amino acid preparations for injection or vaginal use;
- (35) Aminocaproic acid;

- (36) Aminohippurate;
- (36.5) Aminolevulinic acid;
- (37) Aminophylline;
- (38) Aminosalicylate — See exceptions;
- (39) Aminosalicylate calcium — See exceptions;
- (40) Aminosalicylate potassium — See exceptions;
- (41) Aminosalicylate sodium — See exceptions;
- (42) Aminosalicylic acid — See exceptions;
- (42.1) Amiodarone;
- (43) Amisometradine;
- (44) Amitriptyline;
- (44.3) Amlexanox;
- (44.5) Amlodipine;
- (44.6) Ammonia, N-13;
- (44.7) Ammonium lactate;
- (45) Amodiaquin;
- (45.5) Amoxapine;
- (46) Amoxicillin;
- (47) Amphotericin B;
- (48) Ampicillin;
- (48.2) Amprenavir;
- (48.6) Amrinone;
- (49) Amyl nitrite;
- (50) Amyloytic enzymes;
- (50.1) Anabolic steroids, if listed in Code Section 16-13-27.1 as being exempt as Schedule III controlled substances;
- (50.3) Anagrelide;
- (50.4) Anakinra;
- (50.5) Anastrozole;
- (51) Androgens, except those androgens listed in paragraph (6) of Code Section 16-13-27;

- (52) Angiotensin amide;
- (52.5) Anidulafungin;
- (53) Anisindione;
- (54) Anisotropine;
- (55) Antazoline;
- (56) Anterior pituitary hormones;
- (57) Anthralin;
- (58) Anti-coagulant acid:
 - (A) Citrate dextrose;
- (59) Antigens:
 - (A) Alternaria tenius;
 - (B) Aqua ivy;
 - (C) Ash mix;
 - (D) Aspergillus fumigatus;
 - (E) Bacterial, Staphylococcus aureus, Type 1;
 - (F) Bacterial, Staphylococcus aureus, Type 3;
 - (G) Bacterial, Undenatured;
 - (H) Bee;
 - (I) Beech;
 - (J) Bermuda grass;
 - (K) Birch;
 - (L) California live oak;
 - (M) Candida albicans;
 - (N) Careless weed;
 - (O) Cat epithelia;
 - (P) Cattle epithelia;
 - (Q) Coccidioides immitis;
 - (R) Cottonwood fremont;
 - (S) Dog epithelia;
 - (T) Elm mix;
 - (U) English plantain;

- (V) Feather mix;
- (W) Gram negative bacterial;
- (X) Helminthosporium sativum;
- (Y) Hickory;
- (Z) Hormodendrum hordei;
- (AA) Hornet;
- (BB) House dust;
- (CC) House dust mix;
- (DD) Insects;
- (EE) Intradermal or scratching test;
- (FF) Johnson grass;
- (GG) Kentucky blue grass;
- (HH) Kochia;
- (II) Lamb quarters;
- (JJ) Maple;
- (KK) Mesquite;
- (LL) Mixed epidermals;
- (MM) Mixed grass, ragweeds (spring-fall);
- (NN) Mixed grasses (spring);
- (OO) Mixed inhalants;
- (PP) Mixed molds;
- (QQ) Mixed ragweed;
- (RR) Mixed ragweed — mixed weeds (fall);
- (SS) Mixed weeds;
- (TT) Molds;
- (UU) Mountain cedar;
- (VV) Mugwort common;
- (WW) National weed mix;
- (XX) Oak mix;
- (YY) Olive;
- (ZZ) Orchard grass;

- (AAA) Pecan;
- (BBB) Penicillium notatum;
- (CCC) Perennial rye;
- (DDD) Poison oak and poison ivy;
- (EEE) Pollens;
- (FFF) Poplar mix;
- (GGG) Prescription;
- (HHH) Ragweed mix;
- (III) Red top grass;
- (JJJ) Respiratory bacterial;
- (KKK) Rough pigweed;
- (LLL) Russian thistle;
- (MMM) Sagebrush common;
- (NNN) Scale mix;
- (OOO) Short ragweed;
- (PPP) Simplified allergy screening set;
- (QQQ) Skin bacterial;
- (RRR) Southern grass;
- (SSS) Staphylococcal;
- (TTT) Stinging insect mix;
- (UUU) Stinging insects;
- (VVV) Sweet vernal;
- (WWW) Sycamore;
- (XXX) Tall ragweed;
- (YYY) Timothy;
- (ZZZ) Tree mix;
- (AAAA) Trees (early spring);
- (BBBB) Walnut;
- (CCCC) Wasp;
- (DDDD) West ragweed;
- (EEEE) West weed mix;

- (FFFF) Yellow jacket;
- (60) Antihemophilic factor, Human;
- (61) Antirabies serum;
- (62) Antivenin;
- (62.1) Apomorphine;
- (62.3) Apraclonidine;
- (62.4) Aprepitant;
- (62.5) Aprotinin;
- (62.7) Ardeparin;
- (62.75) Arformoterol tartrate;
- (62.8) Argatroban;
- (63) Arginine, L-;
- (63.5) Aripiprazole;
- (64) Arsenic — Preparation for human use;
- (64.1) Arsenic trioxide;
- (65) Artegraft;
- (65.5) Artemether;
- (66) Ascorbate sodium — Injection;
- (66.5) Asenapine;
- (67) Asparaginase;
- (67.6) Astemizole;
- (67.67) Astenajavol;
- (67.72) Atazanavir;
- (68.1) Atenolol;
- (68.15) Atomoxetine;
- (68.2) Atorvastatin;
- (68.3) Atovaquone;
- (68.4) Atracurium besylate;
- (68.5) Atropine — See exceptions;
- (68.6) Auranofin;
- (69) Aurothioglucose;

- (69.5) Azacitidine;
- (70) Azapetine;
- (71) Azatadine maleate;
- (72) Azathioprine;
- (72.3) Azelaic acid;
- (72.4) Azelastine;
- (72.43) Azfice-T;
- (72.45) Azilsartan;
- (72.5) Azithromycin;
- (72.7) Azlocillin;
- (73) Azo-sulfisoxazole;
- (73.5) Aztreonam;
- (74) Azuresin;
- (75) Bacitracin — See exceptions;
- (76) Baclofen;
- (76.5) Balsalazide;
- (77) Barium — See exceptions;
- (78) Beclomethasone;
- (78.3) Belatacept;
- (78.5) Belimumab;
- (79) Belladonna;
- (80) Belladonna alkaloids;
- (81) Belladonna extracts;
- (82) Benactyzine;
- (82.5) Benazepril;
- (82.7) Bendamustine;
- (83) Bendroflumethiazide;
- (83.1) Benoxaprofen;
- (83.2) Bentiomide;
- (83.5) Bentoquatam — See exceptions;
- (84) Benzestrol;

- (85) Benzonatate;
- (86) Benzoylpas;
- (87) Benzquinamide;
- (88) Benzthiazide;
- (89) Benztropine;
- (90) Benzylpenicilloyl - polylysine;
- (91) Bephenium hydroxynaphthoate;
- (91.3) Bepotastine;
- (91.5) Bepridil;
- (91.7) Beractant;
- (91.8) Besifloxacin;
- (92) Beta-carotene — See exceptions;
- (93) Betadine vaginal gel;
- (94) Betahistine;
- (94.5) Betaine, anhydrous;
- (95) Betamethasone;
- (95.1) Betaxolol;
- (96) Betazole;
- (97) Bethanechol;
- (97.1) Bethanidine sulfate;
- (97.2) Bevacizumab;
- (97.3) Bexarotene;
- (97.5) Bicalutamide;
- (98) Bile extract;
- (98.2) Bimatoprost;
- (99) Biperiden;
- (100) Bisacodyl tannex;
- (101) Bishydroxycoumarin;
- (101.5) Biskalcitrate;
- (102) Bismuth sodium tartrate — See exceptions;
- (102.05) Bisoprolol;

- (102.1) Bitolterol mesylate;
- (102.5) Bivalirudin;
- (103) Blastomycine;
- (104) Bleomycin;
- (104.5) Boceprevir;
- (105) Boroglycerin glycerite;
- (105.3) Bortezomib;
- (105.5) Bosentan;
- (105.7) Botulinum toxin (B);
- (106) Botulism antitoxin;
- (106.5) Brentuxima vedotin;
- (107) Bretylium;
- (107.3) Briazolamide;
- (107.5) Brimonidine;
- (108) Bromelains — See exceptions;
- (108.5) Bromfenac;
- (109) Bromisovalum;
- (110) Bromocriptine;
- (111) Bromodiphenhydramine;
- (112) Brompheniramine — See exceptions;
- (113) Brucella antigen;
- (114) Brucella protein nucleate;
- (115) Buclizine;
- (115.3) Budesonide;
- (115.5) Bumetanide;
- (116) Bupivacaine;
- (116.05) Reserved;
- (116.1) Bupropion;
- (116.5) Buspirone;
- (117) Busulfan;
- (118) Butacaine;

- (119) Butaperazine;
- (119.05) Butenafine — See exceptions;
- (119.1) Butoconazole — See exceptions;
- (120) Reserved;
- (121) Butyl nitrite;
- (122) Butyrophenone;
- (122.3) Cabazitaxel;
- (122.5) Cabergoline;
- (123) Cadmium sulfide — See exceptions;
- (124) Caffeine sodium benzoate;
- (124.3) Calcifediol;
- (124.7) Calcipotriene;
- (125) Calcitonin, Salmon;
- (126) Calcitriol;
- (127) Calcium disodium edetate — See exceptions;
- (128) Calcium gluconogalactogluconate;
- (129) Calcium levulinate;
- (129.5) Calfactant;
- (130) Calusterone;
- (130.3) Canakinumab;
- (130.5) Candesartan;
- (131) Candicidin;
- (132) Cantharidin;
- (132.5) Capecitabine;
- (133) Capreomycin;
- (133.05) Capsaicin — see exceptions;
- (133.1) Captopril;
- (134) Capyodiame;
- (135) Caramiphen;
- (136) Carbachol;
- (137) Carbamazepine;

- (138) Carbazochrome;
- (139) Carbenicillin;
- (140) Carbetapentane;
- (141) Carbidopa;
- (142) Carbinoxamine;
- (142.5) Carboplatin;
- (143) Carglumic Acid;
- (144) Carmustine;
- (144.1) Carnitine;
- (145) Carphenazine;
- (145.6) Carteolol;
- (145.8) Carvedilol;
- (146) Casein hydrolysate;
- (146.6) Caspofungin;
- (147) Catarrhalis combined vaccine;
- (148) Catarrhalis vaccine mixed;
- (149) Cefaclor;
- (150) Cefadroxil;
- (151) Cefamandole;
- (151.3) Cefazolin;
- (151.4) Cefdinir;
- (151.45) Cefditoren;
- (151.5) Cefepime;
- (151.6) Cefixime;
- (151.7) Cefmetazole;
- (151.8) Cefonicid;
- (152) Cefoperazone;
- (152.1) Ceforanide;
- (152.2) Cefotaxime;
- (152.3) Cefotetan;
- (152.7) Cefotiam;

- (152.9) Cefoxitin;
- (153.1) Cefpiramide;
- (153.2) Cefpodoxime;
- (153.3) Cefprozil;
- (153.35) Ceftaroline;
- (153.4) Ceftazidime;
- (153.5) Ceftibuten;
- (153.6) Ceftizoxime;
- (153.8) Ceftriaxone;
- (153.9) Cefuroxime;
- (153.95) Celecoxib;
- (154) Cellulose, Oxadized, Regenerated — See exceptions;
- (154.5) Centruroides [Scorpion] Immune;
- (155) Cephalexin;
- (156) Cephaloglycin;
- (157) Cephaloridine;
- (158) Cephalothin;
- (159) Cephapirin;
- (159.3) Cephradine;
- (159.6) Ceretec;
- (159.8) Cerivastatin;
- (160) Certolizumab;
- (160.1) Ceruletide;
- (160.15) Cetirizine — See exceptions;
- (160.16) Cetrorelix;
- (160.165) Cetuximab;
- (160.17) Cevimeline;
- (160.20) Chenodiol;
- (161) Chlophedianol;
- (162) Chlorambucil;
- (163) Chloramphenicol;

- (164) Chloranil — See exceptions;
- (165) Chlordantoin;
- (166) Chlordiazepoxide in combination with clidinium bromide or water soluble esterified estrogens;
- (166.5) Chlorhexidine — See exceptions;
- (167) Chlormadinone;
- (168) Chlormerodrin;
- (169) Chlormezanone;
- (170) Chloroacetic acid — See exceptions;
- (171) Chlorobutanol — See exceptions;
- (172) Chloroform — See exceptions;
- (173) Chloroguanide;
- (174) Chloroprocaine;
- (175) Chloroquine;
- (176) Chlorothiazide;
- (177) Chlorotriานisene;
- (178) Chloroxine;
- (179) Chlorphenesin;
- (180) Chlorpheniramine — See exceptions;
- (181) Chlorphenoxamine;
- (182) Chlorpromazine;
- (183) Chlorpropamide;
- (184) Chlorprothixene;
- (185) Chlorquinaldol;
- (186) Chlortetracycline;
- (187) Chlorthalidone;
- (188) Chlorzoxazone;
- (189) Cholera vaccine;
- (190) Cholestyramine resin;
- (191) Chondroitin;
- (191.5) Chymopapain;

- (192) Chymotrypsin;
- (192.02) Ciclesonide;
- (192.03) Ciclopirox;
- (192.05) Cidofovir;
- (192.1) Cilastatin;
- (192.4) Cilexetil;
- (192.7) Cilostazol;
- (193) Cimetidine — See exceptions;
- (193.5) Cinacalcet;
- (194) Cinoxacin;
- (194.5) Ciprofloxacin;
- (194.7) Cisapride;
- (194.8) Cisatracurium;
- (195) Cisplatin;
- (195.2) Citalopram;
- (195.3) Cladribine;
- (195.5) Clarithromycin;
- (195.7) Clavulanate;
- (196) Clemastine — See exceptions;
- (196.5) Clevidipine;
- (197) Clidinium bromide;
- (198) Clindamycin;
- (198.05) Clobazam;
- (198.1) Clobetasol propionate;
- (199) Clocortolone pivalate;
- (200) Clofibrate;
- (201) Clomiphene;
- (201.5) Clomipramine;
- (202) Clonidine;
- (203) Clopidogrel;
- (204) Clostridiopeptidase;

- (205) Clotrimazole — See exceptions;
- (206) Cloxacillin;
- (206.5) Clozapine;
- (207) Coal tar solution topical;
- (208) Cobra venom;
- (208.5) Coccidioides immitis;
- (209) Colchicine — See exceptions;
- (209.5) Colesevelam;
- (210) Colestipol;
- (211) Colistimethate;
- (212) Colistin;
- (213) Collagenase;
- (213.1) Collagenase clostridium histolyticum;
- (213.3) Conivaptan;
- (213.5) Corticorelin;
- (214) Corticotropin;
- (215) Corticotropin, Respository;
- (216) Cortisone;
- (217) Cosyntropin;
- (217.5) Crixivan;
- (217.8) Crizotinib;
- (218) Cromolyn — See exceptions;
- (219) Crotaline antivenin, Polyvalent;
- (220) Crotamiton;
- (221) Cryptenamine;
- (221.5) Cupric chloride — injectable;
- (222) Cyanide antidote;
- (223) Cyclacillin;
- (224) Cylandelate;
- (225) Reserved;
- (226) Cyclobenzaprine;

- (227) Cyclomethycaine;
- (228) Cyclopentamine;
- (229) Cyclopentolate;
- (230) Cyclophosphamide;
- (231) Cycloserine;
- (231.5) Cyclosporine;
- (232) Cyclothiazide;
- (233) Cycrimine;
- (234) Cyproheptadine;
- (234.5) Cysteamine;
- (235) Cytarabine;
- (235.5) Dabigatran;
- (236) Dacarbazine;
- (236.6) Daclizumab;
- (237) Dactinomycin;
- (237.1) Dalfampridine;
- (237.2) Dalfopristin;
- (237.5) Dalteparin;
- (237.7) Danaparoid;
- (238) Danazol;
- (239) Dantrolene;
- (239.5) Dapiprazole;
- (240) Dapsone — See exceptions;
- (240.3) Daptomycin;
- (240.5) Darbepoetin alfa;
- (240.6) Darifenacin;
- (240.7) Darunavir;
- (240.9) Dasatinib;
- (241) Daunorubicin;
- (242) Deanol;
- (243) Decamethonium;

- (243.3) Decitabine;
- (243.5) Deferasirox;
- (244) Deferoxamine;
- (244.4) Degarelix;
- (244.5) Delavirdine;
- (245) Demecarium;
- (246) Demeclocycline;
- (247) Demethylchlortetracycline;
- (247.7) Denosumab;
- (248) Deoxyribonuclease, Pancreatic;
- (249) Deserpidine;
- (249.5) Desflurane;
- (250) Desipramine;
- (250.5) Desirudin;
- (251) Deslanoside;
- (251.5) Desloratadine;
- (252) Desmopressin;
- (252.5) Desogestrel;
- (253) Desonide;
- (254) Desoximetasone;
- (255) Desoxycorticosterone;
- (256) Desoxyribonuclease;
- (256.5) Desvenlafaxine;
- (257) Dexamethasone;
- (258) Dexbrompheniramine — See exceptions;
- (259) Dexchlorpheniramine;
- (259.5) Dexlansoprazole;
- (260) Dexpanthenol;
- (260.5) Dexrazoxane;
- (261) Dextran;
- (262) Reserved;

- (263) Dextriferron;
- (264) Dextroisoephedrine;
- (265) Dextrothyroxine;
- (265.5) Dezocine;
- (266) Diatrizoate;
- (267) Diazoxide;
- (268) Dibucaine;
- (269) Dichloralphenazone;
- (270) Dichlorphenamide;
- (270.5) Diclofenac;
- (271) Dicloxacillin;
- (272) Dicyclomine;
- (272.5) Didanosine;
- (273) Dienestrol;
- (273.5) Dienogest;
- (274) Diethylcarbamazine;
- (275) Diethylstilbestrol;
- (276) Reserved;
- (277) Diflorasone diacetate;
- (277.5) Diflunisal;
- (277.57) Difluprednate;
- (278) Digitalis;
- (279) Digitoxin;
- (280) Digoxin;
- (281) Dihydroergocornine;
- (282) Dihydroergocristine;
- (283) Dihydroergocryptine;
- (284) Dihydroergotamine;
- (285) Dihydrostreptomycin;
- (286) Dihydrotachysterol;
- (287) Diiodohydroxyquin;

- (287.5) Diltiazem;
- (288) Dimenhydrinate — Injection or suppositories;
- (289) Dimercaprol;
- (290) Dimethindene;
- (291) Dimethylsterone;
- (292) Dimethyl sulfoxide — See exceptions;
- (293) Dimethyl tubocurarine;
- (293.5) Dimyristoyl;
- (294) Dinoprost;
- (295) Dinoprostone;
- (296) Dioxyline;
- (297) Diphenamid;
- (298) Diphenadione;
- (299) Diphenhydramine — See exceptions;
- (300) Diphenidol;
- (301) Diphenylhydantoin;
- (302) Diphenylpyraline;
- (303) Diphtheria antitoxin;
- (304) Diphtheria and tetanus toxoids;
- (305) Diphtheria and tetanus toxoids and pertussis vaccine;
- (306) Diphtheria and tetanus toxoids, Absorbed;
- (307) Diphtheria and tetanus toxoids, Pertussis;
- (308) Diphtheria toxoid;
- (309) Dipivefrin;
- (310) Dipyridamole;
- (311) Dipyron;
- (311.3) Dirithromycin;
- (311.5) Disibind;
- (312) Disodium edetate — See exceptions;
- (313) Disopyramide;
- (314) Disulfiram;

- (314.5) Divalproex;
- (315) Dobutamine;
- (315.5) Docetaxel;
- (315.7) Docosanol — See exceptions;
- (316) Doderlein bacilli;
- (316.2) Dofetilide;
- (316.3) Dolasetron;
- (316.5) Donepezil;
- (317) Dopamine;
- (317.2) Doripenem;
- (317.3) Dornase Alpha;
- (317.4) Dorzolamide;
- (317.5) Doxacurium;
- (318) Doxapram;
- (318.5) Doxazosin mesylate;
- (319) Doxepin;
- (319.5) Doxercalciferol;
- (320) Doxorubicin;
- (321) Doxycycline;
- (322) Doxylamine;
- (323) Doxylamine succinate;
- (324) Dromostanolone;
- (324.5) Dronedarone;
- (325) Droperidol;
- (325.3) Drospirenone;
- (325.4) Drotrecogin alfa;
- (325.45) Duloxetine;
- (325.5) Dutasteride;
- (326) Dyclonine;
- (327) Dydrogesterone;
- (328) Dyphylline;

- (328.5) Ecallantide;
- (329) Echothiophate;
- (329.5) Econazole;
- (330) Ectylurea;
- (330.3) Eculizumab;
- (330.5) Edestate — See exceptions;
- (331) Edrophonium;
- (331.03) Efavirenz;
- (331.05) Eflornithine;
- (331.06) Eltrombopag;
- (331.07) Emedastine;
- (331.072) Emtricitabine;
- (331.1) Enalapril;
- (331.6) Enalaprilat;
- (332) Enflurane;
- (332.2) Enfuvirtide;
- (332.5) Enoxacin;
- (332.7) Enoxaparin;
- (332.8) Entacapone;
- (332.85) Entecavir;
- (332.9) Epinastine;
- (333) Epinephrine;
- (334) Epinephryl borate;
- (334.3) Epirubicin;
- (334.4) Eplerenone;
- (334.5) Epoprostenol;
- (334.7) Eprosartan;
- (334.8) Eptifibatide;
- (335) Ergocalciferol — See exceptions;
- (335.5) Ergoloid mesylates;
- (336) Ergonovine;

- (337) Ergotamine;
- (338) Ergosine;
- (339) Ergocristine;
- (340) Ergocryptine;
- (341) Ergocornine;
- (342) Ergotaminine;
- (343) Ergosinine;
- (344) Ergocristinine;
- (345) Ergocryptinine;
- (346) Ergocorninine;
- (346.05) Eribulin;
- (346.1) Erlotinib;
- (346.5) Ertapenem;
- (347) Erythrityl tetranitrate;
- (348) Erythromycin;
- (348.722) Escitalopram;
- (349) Eserine;
- (349.4) Esmolol;
- (349.7) Esomeprazole;
- (350) Esterified estrogens;
- (351) Estradiol;
- (352) Estriol;
- (353) Estrogens;
- (354) Estrogenic substances;
- (355) Estrone;
- (355.5) Estropipate;
- (356) Ethacrynat;
- (357) Ethacrynic acid;
- (358) Ethambutol;
- (359) Ethamivan;
- (359.5) Ethanolamine oleate;

- (360) Ethaverine;
- (361) Ether — See exceptions;
- (361.5) Ethinamate;
- (362) Ethinyl estradiol;
- (363) Ethiodized oil;
- (364) Ethionamide;
- (365) Ethisterone;
- (366) Ethoheptazine;
- (367) Ethopropazine;
- (368) Ethosuximide;
- (369) Ethotoin;
- (370) Ethoxazene — See exceptions;
- (371) Ethoxyzolamide;
- (372) Ethyl biscoumacetate;
- (373) Ethyl chloride — See exceptions;
- (374) Ethyl nitrite spirit;
- (375) Reserved;
- (376) Ethynorepinephrine;
- (377) Ethynodiol diacetate;
- (378) Etidocaine;
- (379) Etidronate;
- (379.05) Etodolac;
- (379.07) Etomidate;
- (379.09) Etonogestrel;
- (379.1) Etoposide;
- (379.5) Etravirine;
- (380) Eucatropine;
- (380.3) Everolimus;
- (380.5) Exemestane;
- (380.6) Exenatide;
- (380.7) Ezetimibe;

- (381) Factor IX complex, Human;
- (381.1) Famciclovir;
- (381.2) Famotidine — See exceptions;
- (381.3) Felbamate;
- (381.5) Felodipine;
- (381.55) Fenfibrate;
- (381.6) Fenofenadine;
- (381.7) Fenofibrate;
- (381.75) Fenofibric acid;
- (381.8) Fenoldopam;
- (382) Fenoprofen;
- (382.25) Febuxostat;
- (383) Ferric cacodylate;
- (383.15) Ferric Hexacyanoferrate;
- (383.3) Ferumoxides;
- (383.4) Ferumoxsil;
- (383.43) Ferumoxytol;
- (383.45) Fesoterodine;
- (383.5) Fexofenadine — See exceptions;
- (384) Fibrinogen;
- (385) Fibrinogen/antihemophilic factor, Human;
- (386) Fibrinolysin, Human;
- (386.05) Fidaxomicin;
- (386.3) Finasteride;
- (386.5) Filgrastim;
- (386.7) Fingolimod;
- (387) Flavoxate;
- (387.1) Flecainide acetate;
- (388) Florantyrone;
- (388.5) Flosequinan;
- (389) Floxuridine;

- (389.5) Fluconazole;
- (390) Flucytosine;
- (390.5) Fludarabine;
- (390.7) Fludeoxyglucose;
- (391) Fludrocortisone;
- (391.5) Flumazenil;
- (392) Flumethasone;
- (392.1) Flunisolide;
- (393) Fluocinonide;
- (394) Fluocinolone;
- (395) Fluorescein;
- (396) Fluoride — See exceptions;
- (396.5) Fluorometholone;
- (397) Fluorophosphates;
- (398) Fluorouracil;
- (399) Fluoxetine;
- (399.5) Fluoxymesterone;
- (400) Fluphenazine;
- (401) Fluprednisolone;
- (402) Flurandrenolide;
- (402.2) Flurbiprofen;
- (402.5) Flutamide;
- (402.7) Fluticasone;
- (402.8) Fluvastatin;
- (402.9) Fluvoxamine;
- (403) Folate sodium;
- (404) Folic acid — See exceptions;
- (404.3) Follitropin;
- (404.5) Fomivirsen;
- (404.7) Fondaparinux;
- (405) Foreign protein;

- (406) Formaldehyde — See exceptions;
- (406.2) Formoterol;
- (406.3) Fosamprenavir;
- (406.35) Fosaprepitant;
- (406.4) Foscarnet;
- (406.5) Fosfomycin;
- (406.7) Fosinopril;
- (406.9) Fosphenytoin;
- (406.95) Frovatriptan;
- (407) Furazolidone;
- (408) Furosemide;
- (408.2) Gabapentin;
- (408.25) Gadobenate;
- (408.27) Gadobutrol;
- (408.3) Gadodiamide;
- (408.35) Gadofosveset;
- (408.4) Gadopentetate dimeglumine;
- (408.6) Gadoteridol;
- (408.8) Gadoversetamide;
- (408.85) Gadoxetate;
- (408.9) Galantamine;
- (409) Gallamine triethiodide;
- (409.3) Gallium citrate;
- (409.5) Gallium nitrate;
- (409.8) Galsulfase;
- (410) Gamma benzene hexachloride;
- (411) Gamma globulin;
- (411.5) Ganciclovir;
- (411.7) Ganirelix;
- (412) Gas gangrene polyvalent antitoxin;
- (412.03) Gatifloxacin;

- (412.04) Gefitinib;
- (412.05) Gemcitabine;
- (412.1) Gemfibrozil;
- (412.2) Gemifloxacin;
- (412.3) Gemtuzumab ozogamicin;
- (412.5) Genotropin;
- (413) Gentamicin;
- (414) Gentian violet vaginal suppositories;
- (415) Gitalin;
- (415.03) Glatiramer;
- (415.05) Glimepiride;
- (415.1) Glipizide;
- (416) Glucagon;
- (417) Gluceptate;
- (418) Gluconate magnesium;
- (419) Gluconate potassium — See exceptions;
- (420) Glutamate arginine;
- (420.1) Glyburide;
- (420.5) Glycine — See exceptions;
- (421) Glycobiarsol;
- (422) Glycopyrrrolate;
- (423) Gold sodium thiomalate;
- (424) Gold thiosulfate — See exceptions;
- (424.4) Golimumab;
- (425) Gomenol Solution;
- (425.5) Gonadorelin acetate;
- (426) Gonadotropin, Chroinic;
- (427) Gonadotropin, Chroinic, Anti-human serum;
- (428) Gonadotropin, Serum;
- (428.5) Goserelin;
- (429) Gramicidin;

- (430) Gramineae pollens;
- (430.3) Gramosetron;
- (430.5) Granisetron;
- (431) Griseofulvin;
- (431.5) Guanabenz;
- (432) Guanethidine;
- (432.4) Guanadrel;
- (432.7) Guanfacine;
- (432.9) Guanidine;
- (433) Halcinonide;
- (433.5) Halobetasol Propionate;
- (433.7) Halofantrine;
- (434) Haloperidol;
- (435) Haloprogin;
- (436) Halothane;
- (437) Hartman's solution;
- (438) Heparin;
- (439) Hetacillin;
- (440) Hexachlorophene — See exceptions;
- (441) Hexafluorenium;
- (442) Hexacyclium;
- (443) Hexylcaine;
- (444) Histamine;
- (445) Histoplasmin;
- (445.5) Histrelin acetate;
- (446) Homatropine;
- (446.4) Human secretin;
- (446.6) Hyaluronan;
- (446.7) Hyaluronic acid;
- (447) Hyaluronidase;
- (448) Hydralazine;

- (449) Hydrocalciferol;
- (450) Hydrochlorothiazide;
- (451) Hydrocortamate;
- (452) Hydrocortisone — See exceptions;
- (453) Hydroflumethiazide;
- (454) Hydroquinone;
- (455) Hydroxocobalamin — See exceptions;
- (456) Hydroxyamphetamine;
- (457) Hydroxychloroquine;
- (458) Hydroxyprogesterone;
- (459) Hydroxyurea;
- (460) Hydroxyzine;
- (461) Hyoscyamine;
- (462) Hyoscyamus alkaloids;
- (463) Hypophamine;
- (463.03) Ibandronate;
- (464) Ibuprofen — See exceptions;
- (464.05) Ibutilide;
- (464.07) Icatibant;
- (464.1) Idarubicin;
- (464.3) Idoxuridine;
- (464.5) Idursulfase;
- (464.6) Ifosfamide;
- (464.67) Iloperidone;
- (464.7) Iloprost;
- (464.8) Imatinib;
- (465) Imiglucerase;
- (465.1) Imipenem/cilastatin;
- (466) Imipramine;
- (466.5) Imiquimod;
- (467) Immune hepatitis B globulin, Human;

- (468) Immune poliomyelitis globulin, Human;
- (469) Immune serum globulin, Human;
- (469.05) IncobotulinumtoxinA;
- (469.07) Indacaterol;
- (469.1) Indapamide;
- (469.5) Indecainide;
- (470) Indigotindisulfonate;
- (470.05) Indinavir;
- (470.1) Indium IN-III oxyquinolone;
- (470.3) Indium IN-III pentetreotide;
- (471) Indocyanine green;
- (472) Indomethacin;
- (472.5) Infliximab;
- (473) Influenza virus vaccines;
- (474) Injections, All substances for human use — See exceptions;
- (474.2) Insulin aspart;
- (474.4) Insulin glargine;
- (474.45) Insulin glulisine;
- (474.5) Interferon;
- (475) Intrinsic factor concentrate manufactured for human use;
- (475.3) Inulin;
- (475.5) Iobenguane;
- (476) Iocetamic acid;
- (477) Iodamide;
- (478) Iodinated I-125 serum albumin;
- (479) Iodinated I-131 serum albumin;
- (480) Iodinated glycerol-theophylline;
- (481) Iodine solution, Strong oral;
- (482) Iodipamide;
- (482.5) Iodixanol;
- (483) Iodized oil;

- (484) Iodobenzoic acid — See exceptions;
- (485) Idobrassid;
- (485.1) Iodohippurate sodium;
- (486) Iodopyracet;
- (487) Iodothiouracil;
- (487.05) Iofetamine;
- (487.06) Ioflupane;
- (487.08) Iohexol;
- (487.1) Iopamidol;
- (488) Iopanoic acid — See exceptions;
- (489) Iophendylate;
- (489.1) Iopromide;
- (489.2) Iothalamate;
- (489.3) Iothiouracil;
- (489.5) Iotrolan;
- (489.6) Ioversol;
- (490.1) Ioxaglate;
- (490.5) Ioxilan;
- (490.7) Ipilimumab;
- (491) Ipodate;
- (491.5) Ipratropium;
- (491.6) Irbesartan;
- (491.7) Irinotecan;
- (492) Iron cacodylate;
- (493) Iron dextran injection;
- (494) Iron peptonized;
- (495) Iron sorbitex;
- (496) Isocarboxazid;
- (497) Isoetharine;
- (498) Isoflurane;
- (499) Isofluorophate;

- (500) Isomethcptene;
- (501) Isoniazid;
- (502) Isopropamide;
- (503) Isoproterenol;
- (504) Isosorbide dinitrate;
- (504.05) Isosorbide mononitrate;
- (504.1) Isosulfan blue;
- (505) Isothipendyl;
- (505.5) Isotretinoin;
- (506) Isoxsuprime;
- (506.5) Isradipine;
- (506.7) Itraconazole;
- (506.8) Ivermectin;
- (506.9) Ixabepilone;
- (507) Kanamycin;
- (508) Reserved;
- (509) Ketocholanic acids;
- (509.1) Ketoconazole — See exceptions;
- (509.15) Ketoprofen — See exceptions;
- (509.17) Ketorolac tromethamine;
- (509.18) Ketotifen — See exceptions;
- (509.2) Labetalol;
- (509.7) Lacosamide;
- (510) Lactated ringers solution;
- (511) Lactulose;
- (511.3) Lamivudine;
- (511.5) Lamotrigine;
- (512) Lanatoside C;
- (512.3) Lanreotide;
- (512.5) Lansoprazole — see exceptions;
- (512.6) Lanthanum;

- (512.67) Lapatinib;
- (512.7) Latanoprost;
- (513) Latrodectus mactans;
- (513.5) Leflunomide;
- (513.7) Lenalidomide;
- (513.8) Letrozole;
- (514) Leucovorin;
- (514.1) Leuprolide;
- (514.5) Levalbuterol;
- (515) Reserved;
- (515.5) Levamisole;
- (516) Levarterenol;
- (516.05) Levetiracetam;
- (516.07) Levobetaxolol;
- (516.1) Levobunolol;
- (516.3) Levobupivacine;
- (516.5) Levocabastine;
- (516.7) Levocarnitine;
- (516.75) Levocetirizine;
- (517) Levodopa;
- (517.2) Levofloxacin;
- (517.25) Levoleucovorin;
- (517.3) Levomethadyl;
- (517.4) Levonordefrin;
- (518) Levopropoxyphene;
- (519) Levothyroxine;
- (520) Lidocaine — See exceptions;
- (520.5) Linagliptin;
- (521) Lincomycin;
- (522) Lindane — See exceptions;
- (522.5) Linezolid;

- (523) Linolenic acid;
- (524) Liothyronine;
- (525) Liotrix;
- (525.2) Liraglutide;
- (525.5) Lisinopril;
- (526) Lithium carbonate — See exceptions;
- (527) Lithium citrate;
- (528) Liver extract;
- (528.3) Lodoxamide;
- (528.5) Lomefloxacin;
- (529) Lomustine;
- (529.1) Loperamide — See exceptions;
- (529.5) Lopinavir;
- (529.7) Loracarbef;
- (529.9) Loratadine — See exceptions;
- (529.95) Losartan;
- (529.97) Loteprednol;
- (530) Lovastatin;
- (530.5) Loxapine;
- (530.7) Lubiprostone;
- (531) Lugols solution;
- (531.5) Lumefantrine;
- (531.7) Lurasidone;
- (532) Lututrin;
- (533) Lymphogranuloma venereum antigen;
- (534) Lypressin synthetic;
- (535) Mafenide;
- (536) Magnesium gluconate — See exceptions;
- (537) Magnesium salicylate;
- (538) Mandelic acid — See exceptions;
- (539) Mannitol — See exceptions;

- (540) Mannitol hexanitrate;
- (540.1) Maprotiline;
- (540.3) Maraviroc;
- (540.5) Masoprocol;
- (541) Measles immune globulin, Human;
- (542) Measles virus vaccines;
- (543) Mebendazole for human use;
- (544) Mecamylamine;
- (544.5) Mecasermin;
- (545) Mechlorethamine;
- (546) Meclizine — See exceptions;
- (546.5) Meclocycline;
- (547) Meclofenamate;
- (548) Medroxyprogesterone;
- (549) Medrysone;
- (550) Mefenamic acid;
- (550.5) Mefloguine;
- (551) Megestrol;
- (552) Meglumine;
- (552.5) Meloxicam;
- (553) Melphalan;
- (553.5) Memantine;
- (554) Menadiol;
- (555) Menadione;
- (556) Meningococcal polysaccharide vaccine;
- (557) Menotropins;
- (558) Mepenzolate;
- (559) Mephenesin;
- (560) Ephentermine;
- (561) Mephennytoin;
- (562) Meprednisone;

- (563) Mepivacaine;
- (563.5) Mequinol;
- (564) Meralluride;
- (565) Mercaptomerin;
- (566) Mercaptopurine;
- (567) Mercury bichloride — See exceptions;
- (567.1) Meropenem;
- (567.2) Mersalyl;
- (567.3) Mesalamine;
- (567.5) Mesna;
- (568) Mesoridazine;
- (569) Mestranol;
- (570) Metaproterenol;
- (571) Metaraminol;
- (572) Metaxalone;
- (572.5) Metformin;
- (573) Methacholine;
- (574) Methacycline;
- (575) Methallenestril;
- (576) Reserved;
- (577) Reserved;
- (578) Methantheline;
- (579) Methazolamide;
- (580) Methdilazine;
- (581) Methenamine hippurate;
- (582) Methenamine mandelate;
- (583) Methenamine sulfosalicylate;
- (584) Methicillin;
- (585) Methimazole;
- (586) Methiodal;
- (587) Methionine;

- (588) Methixene;
- (589) Methocarbamol;
- (590) Methotrexate;
- (591) Methotriimeprazine;
- (592) Methoxamine;
- (593) Methoxsalen;
- (594) Methoxyflurane;
- (595) Methoxyphenamine;
- (595.5) Methoxy polyethylene glycol-epoetin beta;
- (596) Methscopolamine;
- (597) Methylsuximide;
- (598) Methyclothiazide;
- (599) Methylandrostenediol;
- (600) Methylatropine;
- (601) Methyldopa;
- (602) Methyldopate;
- (603) Methylene blue, Oral;
- (604) Methylergonovine;
- (604.5) Methylnaltrexone;
- (605) Methylprednisolone;
- (606) Reserved;
- (607) Methysergide;
- (608) Metoclopramide;
- (609) Metocurine iodide injection;
- (610) Metolazone;
- (611) Metoprolol;
- (612) Metrizamide;
- (612.5) Metrizoate;
- (613) Metronidazole;
- (614) Metyrapone;
- (615) Metyrosine;

- (615.01) Mexiletine;
- (615.1) Mezlocillin;
- (615.6) Mibepradil;
- (615.9) Micafungin;
- (616) Miconazole — See exceptions;
- (617) Microfibrillar collagen hemostat;
- (617.1) Midodrine;
- (617.22) Midubosathol;
- (617.3) Mifepristone;
- (617.4) Miglitol;
- (617.44) Miglustat;
- (617.47) Milnacipran;
- (617.5) Milrinone;
- (618) Minocycline;
- (619) Minoxidil — See exceptions;
- (619.3) Mirtazapine;
- (619.5) Misoprostol;
- (620) Mithramycin;
- (621) Mitomycin;
- (622) Mitotane;
- (622.3) Mitoxantrone;
- (622.5) Mivacurium;
- (622.7) Moexipril;
- (623) Molindone;
- (623.5) Mometasone;
- (624) Monobenzone;
- (624.1) Monoctanoin;
- (624.5) Montelukast;
- (624.7) Moricizine;
- (625) Morrhuate;
- (625.1) Moxalactam;

- (625.3) Moxidectin;
- (625.5) Moxifloxacin;
- (626) Mumps virus vaccines;
- (626.5) Mupirocin;
- (627) Mushroom spores which, when mature, contain either psilocybin or psilocin;
- (627.5) Mycophenolate;
- (628) N-acetyl-1-cysteine;
- (629) N. cattarhalis antigen;
- (629.5) Nabumetone;
- (630) Nadolol;
- (630.5) Nafarelin;
- (631) Nafcillin;
- (631.5) Naftifine;
- (632) Nalbuphine;
- (633) Reserved;
- (634) Nalidixic acid;
- (634.5) Nalmefene;
- (635) Naloxone;
- (635.1) Naltrexone;
- (636) Reserved;
- (637) Naphazoline — See exceptions;
- (638) Naproxen — See exceptions;
- (638.3) Naratriptan;
- (638.4) Natalizumab;
- (638.45) Nebivolol;
- (638.5) Nedocromil;
- (638.7) Nefazodone;
- (638.75) Nelarabine;
- (638.8) Nelfinavir;
- (639) Neomycin — See exceptions;

- (640) Neostigmine;
- (640.1) Nepafenac;
- (640.2) Nesiritide;
- (640.3) Netilmicin;
- (640.4) Nevirapine;
- (640.5) Niacinamide — See exceptions;
- (640.7) Nicardipine;
- (640.8) Niclosamide;
- (641.1) Nicotine resin complex (polacrilex) — See exceptions;
- (641.15) Nicotine transdermal system — See exceptions;
- (642) Nicotinyl alcohol;
- (642.1) Nifedipine;
- (643) Nifuroximine;
- (644) Nikethamide;
- (644.3) Nilotinib;
- (644.4) Nilutamide;
- (644.5) Nimodipine;
- (644.7) Nisoldipine;
- (644.72) Nitazoxanide;
- (644.8) Nitisinone;
- (644.9) Nitric oxide — for use in humans;
- (645) Nitrofurantoin;
- (646) Nitrofurazone;
- (647) Nitroglycerin;
- (648) Nitroprusside — See exceptions;
- (648.3) Nitrous oxide — See exceptions;
- (648.6) Nizatidine — See exceptions;
- (649.1) Nomifensine maleate;
- (650) Nonoxytol — See exceptions;
- (651) Norepinephrine;
- (652) Norethindrone;

- (653) Norethynodrel;
- (653.5) Norfloxacin;
- (654) Norgestrel;
- (655) Normal serum albumin, Human;
- (656) Nortriptyline;
- (657) Nositol;
- (658) Novobiocin;
- (659) Nux vomica;
- (660) Nylidrin;
- (661) Nystatin;
- (661.5) Octreotide acetate;
- (661.6) Ofatumumab;
- (661.7) Ofloxacin;
- (661.8) Olanzapine;
- (662) Old tuberculin;
- (663) Oleandomycin;
- (663.1) Olmesartan;
- (663.2) Olopatadine;
- (663.3) Olsalazine Sodium;
- (663.4) Omega-3-acid;
- (663.5) Omeprazole — See exceptions;
- (663.7) Ondansetron;
- (663.75) Orlistat — See exceptions;
- (664) Orphenadrine;
- (665) Orthoiodobenzoic acid;
- (665.5) Oseltamivir;
- (665.7) Ovine hyaluronidase;
- (666) Oxacillin;
- (666.4) Oxaliplatin;
- (666.6) Oxamniquine;
- (667) Oxaprozin;

- (667.5) Oxcarbazepine;
- (668) Oxethazaine;
- (668.5) Oxiconazole;
- (669) Oxolinic acid;
- (669.1) Oxprenolol;
- (670) Oxtriphylline;
- (671) Oxybutynin;
- (672) Oxygen for human use — See exceptions;
- (673) Reserved;
- (674) Oxyphenbutazone;
- (675) Oxyphencyclimine;
- (676) Oxyphenisatin;
- (677) Oxyphenonium;
- (678) Oxyquinoline;
- (679) Oxytetracycline;
- (680) Oxytocin;
- (680.5) Ozogamicin;
- (681) P-nitrosulfathiazole;
- (681.3) Paclitaxel;
- (681.4) Palifermin;
- (681.45) Paliperidone;
- (681.5) Palonosetron;
- (681.7) Pamidronate;
- (682) Pancreatin dornase;
- (683) Pancreatic enzyme;
- (684) Pancrelipase;
- (685) Pancuronium;
- (685.5) Panidronate;
- (685.6) Panitumumab;
- (685.7) Pantoprazole;
- (686) Papaverine;

- (687) Paramethadione;
- (688) Paramethasone;
- (689) Paranitrosulfathiazole;
- (690) Parathyroid injection;
- (691) Pargyline;
- (691.5) Paricalcitol;
- (692) Paromomycin;
- (692.2) Paroxetine;
- (692.3) Pazopanib;
- (692.4) Pegademase bovine;
- (692.5) Pegaspargase;
- (692.51) Pegfilgrastin;
- (692.515) Peginterferon;
- (692.517) Pegloticase;
- (692.52) Pegvisomant;
- (692.54) Pemetrexed;
- (692.55) Pemirolast;
- (692.6) Penbutolol;
- (692.8) Penciclovir;
- (693) Penicillamine;
- (694) Penicillin;
- (695) Penicillin G;
- (696) Penicillin O;
- (697) Penicillin V;
- (698) Penicillinase;
- (699) Pentaerythritol tetranitrate;
- (700) Pentagastrin;
- (700.1) Pentamidine isethionate;
- (701) Pentapiperide;
- (701.5) Pentetate calcium trisodium;
- (701.7) Pentetate zinc trisodium;

- (702) Penthienate;
- (703) Pentolinium;
- (703.03) Pentosan;
- (703.05) Pentostatin;
- (703.1) Pentoxifylline;
- (703.4) Pentylenetetrazol;
- (703.45) Perfexane;
- (703.5) Perflubron;
- (703.6) Perfluoroalkylpolyether;
- (703.65) Perflutren;
- (703.7) Pergolide;
- (704) Perindopril;
- (704.1) Permethrin — See exceptions;
- (705) Perphenazine;
- (706) Pertussis immune globulin, Human;
- (707) Phenacetamide;
- (708) Phenaglycodol;
- (709) Phenaphthazine;
- (710) Phenazopyridine — See exceptions;
- (711) Phenelzine;
- (712) Phenethicillin;
- (713) Phenformin;
- (714) Phenindamine;
- (715) Phenindione;
- (716) Pheniramine — See exceptions;
- (717) Phenitramin;
- (718) Phenothiazine derivatives;
- (719) Phenoxybenzamine;
- (720) Phenoxyethyl penicillin;
- (721) Phenuprocoumon;
- (722) Phensuximide;

- (723) Phentolamine;
- (724) Phenylbutazone;
- (725) Phenylmercuric acetate;
- (726) Phenylmercuric nitrate;
- (726.5) Phenylpropanolamine;
- (727) Phenyltoloxamine dihydrogen citrate;
- (727.2) Phenytoin;
- (728) Phthalylsulfacetamide;
- (729) Phthalylsulfathiazole;
- (730) Physostigmine;
- (731) Phytonadione;
- (731.1) Pimozide;
- (732) Pilocarpine;
- (732.3) Pinacidil;
- (732.7) Pindolol;
- (732.8) Pioglitazone;
- (732.9) Pimecrolimus;
- (733) Pipazethate;
- (733.5) Pipecuronium;
- (734) Pipenzolate;
- (735) Piperacetazine;
- (735.1) Piperacillin;
- (736) Piperazine;
- (737) Piperidolate;
- (738) Piperocaine;
- (739) Pipobraman;
- (740) Pipradrol;
- (740.05) Pirbuterol;
- (740.1) Piroxicam;
- (740.5) Pitavastatin;
- (741) Plague vaccine;

- (742) Plasma protein fraction;
- (742.3) Plerixafor;
- (742.5) Plicamycin;
- (743) Pneumococcal polyvalent vaccine;
- (743.3) Podofilox;
- (743.5) Podophyllotoxin;
- (744) Poison ivy extract;
- (745) Poison ivy oak extract;
- (746) Poison ivy oak, sumac extract;
- (747) Poldine methylsulfate;
- (747.4) Polidocanol;
- (748) Poliomyelitis vaccine;
- (749) Poliovirus vaccine, Live, Oral, All;
- (750) Polyestradiol;
- (751) Polymyxin B — See exceptions;
- (751.5) Polytetrafluoroethylene;
- (752) Polythiazide;
- (752.2) Poractant alfa;
- (752.5) Porfimer;
- (752.7) Posaconazole;
- (753) Posterior pituitary;
- (754) Potassium acetate injection;
- (755) Potassium acid phosphate — See exceptions;
- (756) Potassium p-aminobenzoate — See exceptions;
- (757) Potassium aminosalicylate — See exceptions;
- (758) Potassium arsenite — See exceptions;
- (759) Potassium bicarbonate — See exceptions;
- (760) Potassium carbonate — See exceptions;
- (761) Potassium chloride — See exceptions;
- (762) Potassium citrate — See exceptions;
- (763) Potassium gluconate — See exceptions;

- (764) Potassium hetacillin;
- (765) Potassium iodide — See exceptions;
- (766) Reserved;
- (767) Potassium permanganate — See exceptions;
- (768) Povidone — Iodine — See exceptions;
- (768.8) Pralatrexate;
- (769) Pralidoxime;
- (769.2) Pramipexole;
- (769.3) Pramlintide;
- (769.35) Prasugrel;
- (769.4) Pravastatin;
- (769.7) Praziquantel;
- (770) Prazosin;
- (770.5) Prednicarbate;
- (771) Prednisolone;
- (772) Prednisone;
- (773) Prilocaine;
- (774) Primaquine;
- (775) Primidone;
- (776) Probenecid;
- (777) Probucol;
- (778) Procainamide;
- (779) Procaine;
- (780) Procaine penicillin;
- (781) Procaine penicillin G;
- (782) Procarbazine;
- (783) Prochlorperazine;
- (784) Procyclidine;
- (785) Progesterone;
- (785.5) Proguanil;
- (786) Promazine;

- (787) Promethazine;
- (788) Promethestrol;
- (788.5) Propafenone;
- (789) Propantheline;
- (790) Proparacaine;
- (791) Prophenpyridamine — See exceptions;
- (792) Propiolactone;
- (793) Propiomazine;
- (794) Propoxyccaine;
- (795) Propranolol;
- (795.5) Propylhexedrine;
- (796) Propylparaben;
- (797) Propylthiouracil;
- (798) Protamine sulfate injection;
- (799) Protein hydrolysate injection;
- (800) Protein, Foreign injection;
- (801) Proteolytic enzyme;
- (802) Protirelin;
- (803) Protokylol;
- (804) Protoveratrine A and B;
- (805) Protriptyline;
- (805.5) Prussian blue;
- (806) Reserved;
- (807) Pseudomonas polysaccharide complex;
- (808) P-ureidobenzeneearsonic acid;
- (809) Purified protein derivatives of tuberculin;
- (810) Pyrantel;
- (811) Pyrazinamide;
- (812) Pyrazolon;
- (813) Pyridostigmine;
- (814) Pyrimethamine;

- (815) Pyrrobutamine;
- (816) Pyrvinium;
- (816.5) Quetiapine;
- (817) Quinacrine;
- (817.5) Quinapril;
- (818) Quinestrol;
- (819) Quinethazone;
- (820) Quinidine;
- (821) Quinine hydrochloride;
- (822) Quinine and urea hydrochloride;
- (822.3) Quinupristin;
- (822.5) Rabeprazole;
- (823) Rabies anti-serum;
- (824) Rabies immune globulin, Human;
- (825) Rabies vaccine;
- (826) Radio-iodinated compounds;
- (827) Radio-iodine;
- (828) Radio-iron;
- (829) Radioisotopes;
- (830) Radiopaque media;
- (831) Ragweed pollen extract;
- (831.02) Raloxifene;
- (831.03) Raltegravir;
- (831.04) Ramelteon;
- (831.05) Ramipril;
- (831.07) Ranibizumab;
- (831.1) Ranitidine — See exceptions;
- (831.3) Ranolazine;
- (831.5) Rapacuronium;
- (831.7) Rasagiline;
- (832) Rauwolfia serpentina;

- (832.2) Reboparhamil;
- (832.5) Regadenoson;
- (833) Rescinnamine;
- (834) Reserpine;
- (835) Reserpine alkaloids;
- (836) Resorcinol monoacetate — See exceptions;
- (836.3) Retapamulin;
- (836.5) Retinoic acid, all-trans;
- (837) Rhus toxicodendron antigen;
- (838) Rh D immune globulin, Human;
- (838.5) Ribavirin;
- (839) Riboflavin — See exceptions;
- (840) Ricinoleic acid;
- (840.5) Rifabutin;
- (841) Reserved;
- (842) Rifampin;
- (842.1) Rifapentine;
- (842.15) Rifaximin;
- (842.17) Rilonacept;
- (842.18) Rilpivirine;
- (842.2) Riluzole;
- (842.4) Rimantadine;
- (842.7) Rimexolone;
- (843) Ringer's injection;
- (843.2) Risedronate;
- (843.3) Risperidone;
- (843.7) Ritodrine;
- (843.8) Ritonavir;
- (843.82) Rituximab;
- (843.825) Rivaroxaban;
- (843.83) Rivastigmine;

- (843.9) Rizatritpan;
- (844) Rocky mountain spotted fever vaccine;
- (844.5) Rocuronium;
- (844.7) Rofecoxib;
- (844.75) Roflumilast;
- (845) Rolitetracycline;
- (845.1) Romidepsin;
- (845.15) Romiplostim;
- (845.3) Ropinirole;
- (845.5) Ropivacaine;
- (845.7) Rosiglitazone;
- (845.8) Rosuvastatin;
- (845.9) Rotavirus vaccine;
- (845.95) Rotigotine;
- (846) Rotoxamine;
- (846.5) RSVIGIV;
- (847) Rubella and mumps virus vaccine;
- (848) Rubella virus vaccine;
- (848.5) Rufinamide;
- (849) Rutin — See exceptions;
- (849.5) Sacrosidase;
- (850) Salicylazosulfapyridine;
- (850.5) Salmeterol;
- (851) Salmonella typhosa, Killed;
- (851.02) Salvinorin A;
- (851.03) Samarium SM 153 lexisidronam;
- (851.04) Saneromazole;
- (851.045) Sapropterin;
- (851.05) Saquinavir;
- (851.1) Saralasin acetate;
- (851.7) Saxagliptin;

- (852) Scopolamine;
- (852.1) Secretin;
- (852.6) Selegiline;
- (853) Selenium sulfide — See exceptions;
- (853.5) Selenomethionine;
- (854) Senecio cineraria extract ophthalmic solution;
- (855) Senega fluid extract;
- (855.3) Seractide acetate;
- (855.5) Sermorelin Acetate;
- (855.6) Sertaconazole;
- (855.7) Sertraline;
- (855.74) Sevelamer;
- (855.8) Sevoflurane;
- (855.85) Sildenafil;
- (855.9) Silodosin;
- (856) Silver nitrate ophthalmic solutions or suspensions;
- (857) Silver sulfadiazine cream;
- (857.3) Simethicone coated cellulose suspension;
- (857.5) Simvastatin;
- (858) Sincalide;
- (858.3) Sinecatechins;
- (858.5) Sirolimus;
- (858.7) Sitagliptin;
- (859) Sitosterols;
- (860) Solutions for injections, All;
- (861) Smallpox vaccine;
- (862) Sodium acetate injection;
- (863) Sodium acetrizoate;
- (864) Sodium ascorbate injection;
- (865) Sodium biphosphate — See exceptions;
- (866) Sodium cacodylate;

- (867) Sodium chloride injection;
- (868) Sodium dehydrocholate;
- (869) Sodium dextrothyroxine;
- (870) Sodium estrone;
- (871) Sodium fluorescein — See exceptions;
- (872) Sodium fluoride — See exceptions;
- (873) Sodium iothalamate;
- (873.5) Sodium nitroprusside;
- (873.7) Sodium phenylbutyrate;
- (874) Sodium polystyrene sulfonate;
- (875) Sodium propionated vaginal cream;
- (876) Sodium sulfacetamide;
- (877) Sodium sulfadiazine;
- (878) Sodium sulfobromophthalein;
- (879) Sodium sulfoxone;
- (880) Sodium tetradecyl;
- (880.5) Sodium thiosulfate;
- (881) Sodium tyropanoate;
- (881.05) Solifenacin;
- (881.1) Somatrem;
- (882) Somatropin;
- (882.5) Sorafenib;
- (883) Sorbus extract;
- (883.5) Sotalol;
- (883.8) Sparfloxacin;
- (884) Sparteine;
- (885) Spectinomycin;
- (885.5) Spinosad;
- (886) Spirapril;
- (887) Spironolactone;
- (888) Staphage lysate bacterial antigen;

- (889) Staphylococcus and streptococcus vaccine;
- (890) Staphylococcus toxoid;
- (890.5) Stavudine;
- (891) Stibophen;
- (892) Stinging insect antigens — Combined;
- (893) Stockes expectorant;
- (894) Stramonium;
- (895) Streptococcus antigen;
- (896) Streptokinase-streptodornase;
- (897) Streptomycin;
- (898) Strontium — See exceptions;
- (899) Strophanthin-G;
- (900) Strychnine — See exceptions;
- (901) Succimer;
- (902) Succinylcholine;
- (903) Succinylsulfathiazole;
- (903.1) Sucralfate;
- (903.2) Sulconazole;
- (904) Sulfabenzamide vaginal preparations;
- (905) Sulfacetamide;
- (906) Sulfachlorpyridazine;
- (907) Sulfacytine;
- (908) Sulfadiazine;
- (909) Sulfadimethoxine;
- (909.1) Sulfadoxine;
- (910) Sulfaethidole;
- (911) Sulfaguanidine;
- (912) Sulfamerazine;
- (913) Sulfameter;
- (914) Sulfamethazine;
- (915) Sulfamethizole;

- (916) Sulfamethoxazole;
- (917) Sulfamethoxypyridazine;
- (918) Sulfanilamide;
- (919) Sulfaphenazole;
- (920) Reserved;
- (921) Sulfapyridine;
- (922) Sulfasalazine;
- (922.5) Sulfathiazole;
- (923) Sulfinpyrazone;
- (924) Sulfisomidine;
- (925) Sulfisoxazole;
- (926) Sulfur thioglycerol;
- (927) Sulindac;
- (927.5) Sumatriptan;
- (927.7) Sunitinib;
- (928) Superinone;
- (928.1) Suprofen;
- (929) Sutilains;
- (930) Syrosingopine;
- (930.5) Tacrine;
- (930.7) Tacrolimus;
- (930.9) Tadalafil;
- (931) Tamoxifen;
- (931.1) Tamsulosin;
- (931.3) Tazarotene;
- (931.35) Tazobacam;
- (931.5) Technetium;
- (931.55) Tegaserod;
- (931.553) Telaprevir;
- (931.555) Telavancin;
- (931.56) Telbivudine;

- (931.57) Telithromycin;
- (931.6) Telmisartan;
- (931.7) Temafloxacin;
- (931.75) Temozolomide;
- (931.77) Temsirolimus;
- (931.8) Teniposide;
- (931.85) Terazosin;
- (931.9) Tenofovir;
- (931.95) Terbinafine — See exceptions;
- (932) Terbutaline;
- (932.05) Terconazole;
- (932.1) Terfenadine;
- (932.3) Teriparatide;
- (933) Terpin hydrate with codeine;
- (934) Reserved;
- (935) Tesamorelin;
- (936) Tetanus and diphtheria toxoids;
- (937) Tetanus antitoxin;
- (938) Tetanus immune globulin;
- (939) Tetanus toxoids;
- (939.5) Tetrabenazine;
- (940) Tetracaine;
- (941) Tetracycline;
- (942) Tetraethylammonium chloride;
- (943) Tetrahydrozoline — See exceptions;
- (943.5) Thalidomide;
- (944) Thallous chloride;
- (945) Theobromide;
- (945.5) Theobromine;
- (946) Theobromine magnesium oleate;
- (947) Theophylline — See exceptions;

- (948) Theophylline sodium glycinate;
- (949) Thiabendazole;
- (950) Thiamylal;
- (951) Thiethylperazine;
- (952) Thiopropazate;
- (953) Thioguanine;
- (954) Thioridazine;
- (955) Thiosalicylate;
- (956) Thiotepa;
- (957) Thiothixene;
- (958) Thiphenamil;
- (959) Thrombin;
- (960) Thyroglobulin;
- (961) Thyroid;
- (962) Thyrotropin;
- (963) Thyroxine;
- (964) Thyroxine fraction;
- (964.5) Tiagabine;
- (964.7) Ticagrelor;
- (965) Ticarcillin;
- (965.5) Ticlopidine;
- (966) Ticrynafen;
- (966.3) Tigecycline;
- (966.6) Tiludronate;
- (967) Timolol;
- (967.1) Tinidazole;
- (967.2) Tinzaparin;
- (967.3) Tioconazole — See exceptions;
- (967.5) Tiopronin;
- (967.55) Tiotropium;
- (967.57) Tipranavir;

- (967.6) Tirofiban;
- (967.7) Tizanidine;
- (968) Tobramycin;
- (968.1) Tocainide;
- (969) Tocamphyl;
- (969.6) Tocilizumab;
- (970) Tolazamide;
- (971) Tolazoline;
- (972) Tolbutamide;
- (972.5) Tolcapone;
- (973) Tolmetin;
- (973.05) Tolterodine;
- (973.07) Tolvaptan;
- (973.1) Topiramate;
- (973.3) Topotecan;
- (973.4) Toremifene;
- (973.5) Torsemide;
- (973.7) Tramadol;
- (973.8) Trandolapril;
- (973.9) Tranexamic acid;
- (974) Tranylcypromine;
- (974.4) Travoprost;
- (974.5) Trazodone;
- (974.7) Treprostinil;
- (975) Tretinoin;
- (976) Triamcinolone;
- (977) Triamterene;
- (978) Trichlormethiazide;
- (979) Trichloroacetic acid — See exceptions;
- (980) Trichloroethylene — See exceptions;
- (981) Trichlobisonium;

- (982) Triclofos;
- (983) Tridihexethyl chloride;
- (983.1) Trientine;
- (984) Triethanolamine polypeptides;
- (985) Triethylenethiophosphoramide;
- (986) Trifluoperazine;
- (987) Triflupromazine;
- (988) Trifluridine;
- (989) Trihexyphenidyl;
- (990) Triiodothyronine;
- (990.1) Trilostane;
- (991) Trimeprazine;
- (992) Trimethadione;
- (993) Trimethaphan cansylate;
- (994) Trimethobenzamide;
- (995) Trimethoprim;
- (995.5) Trimetrexate;
- (996) Trimipramine;
- (997) Triolein;
- (998) Trioxsalen;
- (999) Tripelennamine — See exceptions;
- (1000) Triphenyltetrazolium;
- (1001) Triple sulfas;
- (1002) Triprolidine — See exceptions;
- (1002.5) Triptorelin;
- (1003) Trisulfapyrimidines;
- (1003.5) Troglitazone;
- (1004) Troleandomycin;
- (1005) Trolnitrate;
- (1006) Tromethamine;
- (1007) Tropicamide;

- (1007.3) Trospium;
- (1007.5) Trovafloxacin;
- (1008) Trypsin;
- (1009) Trypsin-chymotrypsin;
- (1010) Tuaminoheptane;
- (1011) Tuberculin, Purified protein derivatives;
- (1012) Tuberculin tine test;
- (1013) Tuberculin, Old;
- (1014) Tubocurarine;
- (1015) Tybamate;
- (1016) Typhoid and paratyphoid vaccine;
- (1017) Typhus vaccine;
- (1018) Tyropanoate;
- (1018.5) Ulipristal;
- (1019) Undecoylium;
- (1019.5) Unoprostone;
- (1020) Uracil;
- (1021) Urea — See exceptions;
- (1021.3) Urofollitropin;
- (1021.5) Ursodiol;
- (1021.6) Ustekinumab;
- (1021.7) Valacyclovir;
- (1021.8) Valdecoxib;
- (1022) Valethamate;
- (1022.2) Valganciclovir;
- (1023) Valproate;
- (1024) Valproic acid — See exceptions;
- (1024.3) Valrubicin;
- (1024.5) Valsartan;
- (1025) Vancomycin;
- (1025.2) Vandetanib;

- (1025.5) Vardenafil;
- (1025.7) Varenicline;
- (1026) Vasopressin;
- (1027) VDRL antigen;
- (1027.1) Vecuronium bromide;
- (1027.3) Velaglucerase;
- (1027.5) Velnacrine;
- (1027.55) Vemurafenib;
- (1027.6) Venlafaxine;
- (1027.7) Verapamil;
- (1028) Veratrum viride;
- (1029) Versenate;
- (1029.5) Verteporfin;
- (1030) Vidarabine;
- (1030.3) Vigabatrin;
- (1030.5) Vilazodone;
- (1031) Vinblastine;
- (1032) Vincristine;
- (1032.5) Vinorelbine;
- (1033) Vinyl ethyl — See exceptions;
- (1034) Viomycin;
- (1035) Vitamin K;
- (1036) Vitamin B12 injection;
- (1037) Vitamine with fluoride;
- (1037.5) Voriconazole;
- (1037.7) Vorinostat;
- (1038) Warfarin;
- (1039) Wargarin;
- (1039.1) Xylocaine;
- (1040) Yellow fever vaccine;
- (1041) Yohimbine;

(1042) 4-chloro-3, 5-xylenol — See exceptions;

(1042.01) Zafirlukast;

(1042.02) Zalcitabine;

(1042.03) Zanamivir;

(1042.05) Zidovudine;

(1042.4) Zileuton;

(1042.7) Zinc acetate — See exceptions;

(1042.75) Ziprasidone;

(1042.8) Zoledronic Acid;

(1042.9) Zolmitriptan;

(1042.92) Zonisamide;

(1043) Devices that require a prescription:

(A) Cellulose, Oxadized, Regenerated (surgical absorbable hemostat) — See exceptions;

(B) Diaphragms for vaginal use;

(C) Hemodialysis solutions;

(D) Hemodialysis kits;

(E) Lippes loop intrauterine;

(F) Saf-T-Coil intrauterine device;

(G) Intrauterine devices, All;

(H) Absorbable hemostat;

(I) Gonorrhea test kit.

(c) The following are exceptions to and exemptions from subsection (b) of this Code section:

(1) Atropine sulfate — where the oral dose is less than 1/200 gr. per unit;

(2) Bacitracin cream or ointment for topical use;

(3) Belladonna or belladonna alkaloids when in combination with other drugs and the dosage unit is less than 0.1 mg. of the alkaloids or its equivalent;

(3.5) Bentoquatam — when used with a strength of 5 percent or less in topical preparations;

(4) Beta carotene — all forms occurring in food products or lotions;

(5) Bromelain, pancreatic enzymes, trypsin and bile extract — when labeled properly as digestive aids with appropriate dosage and in compliance with FDA labeling and restrictions;

(6) Brompheniramine — where a single dosage unit is 4 mg. or less but with no more than 3 mg. of the dextrorotary optical isomer of racemic brompheniramine per released dose;

(6.2) Butenafine — when used with a strength of 1 percent or less as a topical preparation;

(6.4) Butoconazole — when used with a strength up to 2 percent in a vaginal preparation;

(6.45) Capsaicin — when in an external analgesic with concentration of 0.25 percent or less;

(6.5) Cetirizine — when a single dosage unit is either 1mg per 1ml or less or 10mg or less;

(6.7) Chlorhexadine — when used with a strength up to 4 percent in a topical skin product;

(7) Chlorpheniramine — where a single dosage unit is 12 mg. or less;

(7.1) Cimetidine — when a single dosage unit is 200 mg. or less;

(7.3) Clemastine — where a single dose is 1.34 mg. or less;

(7.5) Clotrimazole — when a single vaginal insert is 200 mg. or less or with a strength up to 2 percent in a topical skin, topical vaginal, or vaginal product;

(7.8) Cromolyn — when used as cromolyn sodium in a nasal solution of 4 percent or less in strength;

(7.9) Dexbrompheniramine — when a single dosage unit is 6 mg. or less;

(8) Diphenhydramine — up to 12.5 mg. in each 5 cc's when used in cough preparations and up to 50 mg. per single dose when used as a nighttime sleep aid or used as an antihistamine and labeled in compliance with FDA requirements;

(8.5) Docosanol — when used in 10 percent topical preparation to treat fever blisters, cold sores, or fever blisters and cold sores.

(9) Doxylamine succinate — where a single dosage form is 25 mg. or less and when labeled to be used as a nighttime sedative;

(9.3) Edetate — when used in any form other than an oral or parenteral;

- (9.5) Famotidine — when a single dosage unit is 20 mg. or less;
- (9.6) Fexofenadine — when packaged for distribution as an over-the-counter (OTC) drug product;
- (9.7) Fluoride — when used with a strength up to 1,500 parts per million in an oral care or dentifrice product;
- (9.8) Glycine — when used with a strength up to 1.5 percent in an irrigation solution, when used in a topical skin product;
- (10) Hydrocortisone topical skin preparations up to 1.0 percent in strength;
- (11) Hydroxocobalamin, riboflavin, niacinamide, ergocalciferol (maximum of 400 I.U. per day), Folic acid (maximum of 0.4 mg. per day), and magnesium gluconate — when as a source of vitamins and dietary supplement but must bear such labels and adhere to such restrictions of FDA regulations;
- (11.1) Ibuprofen — where a single dose is 200 mg. or less;
- (11.6) Reserved;
- (12) Insulin — all injectable products which do not require a prescription drug order and bear a label which indicates "Rx Use Only" or are otherwise listed under subsection (b) of this Code section; and no injectable insulin product may be sold except by a pharmacy issued a permit by the State Board of Pharmacy or by a medical practitioner authorized to dispense medications;
- (12.3) Ketoconazole — when used with a strength of 1 percent or less in topical preparations;
- (12.5) Ketoprofen — when a single dosage unit is 12.5 mg. or less;
- (12.7) Ketotifen — when used with a strength of 0.025 percent or less in an ophthalmic solution;
- (12.9) Lansoprazole — when a single dosage unit is 15 mg. or less;
- (13) Lidocaine topical ointment, 25 mg./gm. or less;
- (13.5) Loperamide — where a single dose is either 1 mg. per 5 ml. or 2 mg. per dosage unit;
- (13.7) Loratadine — when used in a single dose of 10 mg. or less, including doses used in combination with other drugs provided for under this subsection;
- (14) Meclizine — 25 mg. or less;
- (14.1) Miconazole — when used as antifungal powder or cream, or both, and containing not more than 4 percent of miconazole, or when

used as a vaginal insert and containing not more than 1,200 mg. of miconazole;

(14.2) Minoxidil — when used with a strength of 5 percent or less in topical preparations;

(14.3) Naphazoline — when used in an ophthalmic solution in a concentration of 0.027 percent or less in combination with a pheniramine concentration of 0.315 percent or less;

(14.5) Naproxen — where a single dosage unit is 220 mg. or less;

(15) Neomycin sulfate ointment or cream for topical use;

(15.5) Nicotine resin complex (polacrilex) — when used as oral chewing gum where a single dose (piece of gum) is 4 mg. or less;

(15.55) Nicotine transdermal system — when used in a strength of 21 mg. or less per transdermal patch (transdermal delivery system);

(16) Nitrous oxide — air products suppliers shall not sell medical grade nitrous oxide to other than licensed practitioners or medical suppliers; industrial grade nitrous oxide shall only be sold when mixed with not less than 100 parts per million of sulfur dioxide and used as a fuel additive for combustion engines or when used in industrial laboratory equipment;

(16.3) Nizatidine — when a single dosage unit is 75 mg. or less;

(16.8) Nonoxynol — when used with a strength up to 12.5 percent or 1 gram per dose in a vaginal product;

(16.9) Omeprazole — when a single dosage unit is 20.6 mg. or less;

(16.95) Orlistat — when a single dosage unit is 60 mg. or less;

(17) Oxygen — compressed oxygen which is not labeled "CAUTION: Federal law prohibits dispensing without prescription" or similar wording;

(17.3) Permethrin — when used as a topical preparation in a strength of 1 percent or less;

(17.5) Phenazopyridine — where a single dose is 100 mg. or less, as approved by the federal Food and Drug Administration;

(18) Pheniramine — when the oral dose is 25 mg. or less, or when used in an ophthalmic solution in a concentration of 0.315 percent or less in combination with a naphazoline concentration of 0.027 percent or less;

(19) Polymyxin B when in combination with other drugs in an ointment or cream for topical use;

- (20) Any potassium electrolyte when manufactured for use as a dietary supplement, food additive for industrial, scientific, or commercial use, or when added to other drug products when the product is not intended as a potassium supplement but must bear such labels and adhere to such restrictions of FDA regulations;
- (21) Povidone — Iodine solutions and suspensions;
- (22) Reserved;
- (23) Reserved;
- (23.5) Ranitidine — when a single dosage unit is 150 mg. or less;
- (24) Rutin — where the dosage unit is less than 60 mg.;
- (25) Selenium sulfide suspension 1 percent or less in strength;
- (25.1) Strychnine — when used in combination with other active ingredients in a rodent killer, and when not bearing a label containing the words "CAUTION: Federal law prohibits dispensing without prescription" or other similar wording;
- (25.5) Terbinafine — when used with a strength of 1 percent or less in a topical antifungal cream;
- (26) Tetrahydrozaline for ophthalmic or topical use;
- (27) Theophylline preparations alone or in combination with other drugs prepared for and approved for OTC (over the counter) sale by FDA; example — tedral tablets (plain) or oral suspension;
- (27.5) Tioconazole — when used with a strength of 1 percent or less in topical preparations or when used with a strength of 6.5 percent or less in vaginal preparations;
- (28) Tripelennamine cream or ointment for topical use;
- (28.5) Triprolidine — when a single dose is 5 mg. or less when combined in the same preparation as one or more other drug products for use as an antihistamine or decongestant or an antihistamine and decongestant;
- (29) Urea — except when the manufacturer's label contains the wording "CAUTION: Federal law prohibits dispensing without prescription" or similar wording;
- (29.5) Zinc acetate — when used in topical preparations;
- (30) Any drug approved by FDA for animal use and the package does not bear the statement "CAUTION: Federal law prohibits dispensing without prescription" or similar wording; or
- (31) Loperamide Oral Liquid (1.00 mg/5.00 ml).

(d) The following list of compounds or preparations may be purchased without a prescription, provided the products are manufactured for industrial, scientific, or commercial sale or use, unless they are intended for human use or contain on the label "CAUTION: Federal law prohibits dispensing without prescription" or similar wording:

- (1) Aminosalicylate;
- (2) Aminosalicylate calcium;
- (3) Aminosalicylate potassium;
- (4) Aminosalicylate sodium;
- (5) Aminosalicylic acid;
- (6) Barium;
- (7) Beta-carotene;
- (8) Bismuth sodium tartrate;
- (9) Cadmium sulfide;
- (10) Calcium disodium edetate;
- (11) Cellulose, Oxadized, Regenerated;
- (12) Chlorabutanol;
- (13) Chloranil;
- (14) Chloroacetic acid;
- (15) Chloroform;
- (16) Colchicine;
- (17) Dapsone;
- (18) Dimethyl sulfoxide;
- (19) Disodium edetate;
- (20) Edetate disodium;
- (21) Ether;
- (22) Ethoxazene;
- (23) Ethyl chloride;
- (24) Fluoride;
- (25) Formaldehyde;
- (26) Gold thiosulfate;
- (27) Hexachlorophene;

- (28) Iodobenzoic acid;
- (29) Iopanoic acid;
- (30) Lindane;
- (31) Lithium carbonate;
- (32) Mandelic acid;
- (33) Mannitol;
- (34) Mercury bichloride;
- (35) Nitroprusside;
- (36) Potassium aminosalicylate;
- (37) Potassium p-aminobenzoate;
- (37.5) Potassium perchlorate;
- (38) Potassium permanganate;
- (39) Resorcinol monoacetate;
- (40) Selenium sulfide;
- (41) Sodium biphosphate;
- (42) Sodium fluorescein;
- (43) Sodium fluoride;
- (44) Strontium;
- (45) Trichloroacetic acid;
- (46) Trichloroethylene;
- (47) Valproic acid;
- (48) Vinyl ether;
- (49) 4-chloro-3, 5-xylenol.

(e) The State Board of Pharmacy may delete drugs from the dangerous drug list set forth in this Code section. In making such deletions the board shall consider, with respect to each drug, the following factors:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the drug;
- (4) The history and current pattern of abuse, if any;
- (5) The scope, duration, and significance of abuse;

(6) Reserved;

(7) The potential of the drug to produce psychic or physiological dependence liability; and

(8) Whether such drug is included under the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040 (1938), 21 U.S.C. Section 301, et seq., as amended. (Code 1933, § 79A-702, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1972, p. 948, § 1; Ga. L. 1976, p. 631, § 1; Ga. L. 1978, p. 1668, § 5; Ga. L. 1979, p. 859, § 3; Ga. L. 1980, p. 1746, § 2; Ga. L. 1981, p. 557, § 2; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2403, §§ 3-8, 20; Ga. L. 1983, p. 3, § 13; Ga. L. 1983, p. 349, §§ 3-6; Ga. L. 1984, p. 22, § 16; Ga. L. 1984, p. 1019, §§ 3-5; Ga. L. 1985, p. 1219, §§ 8, 9; Ga. L. 1986, p. 1555, §§ 6, 7; Ga. L. 1987, p. 261, § 7; Ga. L. 1989, p. 233, §§ 7, 8; Ga. L. 1990, p. 640, §§ 2, 3; Ga. L. 1991, p. 312, § 2; Ga. L. 1992, p. 6, § 16; Ga. L. 1992, p. 1131, §§ 5-7; Ga. L. 1993, p. 590, §§ 4-7; Ga. L. 1994, p. 169, §§ 6, 7; Ga. L. 1994, p. 849, § 1; Ga. L. 1996, p. 356, §§ 3-5; Ga. L. 1997, p. 1311, §§ 6-10; Ga. L. 1998, p. 778, §§ 3-6; Ga. L. 1999, p. 81, § 16; Ga. L. 1999, p. 643, §§ 2-5; Ga. L. 2000, p. 1317, §§ 4-6; Ga. L. 2001, p. 816, §§ 4-6; Ga. L. 2003, p. 349, §§ 8-11; Ga. L. 2004, p. 488, §§ 4-7; Ga. L. 2005, p. 1028, §§ 2, 3/SB 89; Ga. L. 2006, p. 219, §§ 3-5/HB 1054; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2007, p. 605, §§ 3-5/HB 286; Ga. L. 2008, p. 169, §§ 6, 7, 8/HB 1090; Ga. L. 2009, p. 126, § 5/HB 368; Ga. L. 2010, p. 860, §§ 5, 6, 7/SB 353; Ga. L. 2010, p. 905, § 1/HB 1021; Ga. L. 2011, p. 656, §§ 7-10/SB 93; Ga. L. 2012, p. 40, § 5/SB 370.)

The 2012 amendment, effective March 27, 2012, added paragraphs (b)(14.5), (b)(17.3), (b)(17.7), (b)(72.43), (b)(72.45), (b)(78.3), (b)(78.5), (b)(104.5), (b)(106.5), (b)(154.5), (b)(198.05), (b)(208.5), (b)(217.8), (b)(386.05), (b)(408.27), (b)(464.07), (b)(469.07), (b)(487.06), (b)(490.7), (b)(520.5), (b)(842.18), (b)(843.825), (b)(844.75), (b)(885.5), (b)(931.553), (b)(964.7), (b)(1025.2), (b)(1027.55), and (b)(1030.5).

Editor's notes. — Ga. L. 2012, p. 40, § 1/SB 370, not codified by the General Assembly, which provides for the annual update of the identity of controlled substances and dangerous drugs, is dedicated to the memory of Chase Corbitt Burnett and shall be known and may be cited as "Chase's Law."

CHAPTER 14

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.

16-14-3. Definitions.

16-14-3. Definitions.

As used in this chapter, the term:

- (1) "Alien corporation" means a corporation organized under laws other than the laws of the United States or the laws of any state of the United States.
- (2)(A) "Beneficial interest" means either of the following:
 - (i) The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or
 - (ii) The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.
- (B) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.
- (3) "Civil proceeding" means any civil proceeding commenced by an investigative agency under any provision of this chapter.
- (4) "Criminal proceeding" means any criminal proceeding commenced by an investigative agency under any provision of this chapter.
- (5) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.
- (6) "Enterprise" means any person, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity; or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental as well as other entities.
- (7) "Investigative agency" means the Department of Law or the office of any district attorney.
- (8) "Pattern of racketeering activity" means:
 - (A) Engaging in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents, results, accomplices, victims, or

methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such acts occurred after July 1, 1980, and that the last of such acts occurred within four years, excluding any periods of imprisonment, after the commission of a prior act of racketeering activity; or

(B) Engaging in any one or more acts of domestic terrorism as described in subsection (a) of Code Section 16-4-10 or any criminal attempt, criminal solicitation, or criminal conspiracy related thereto.

(9)(A) "Racketeering activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit any crime which is chargeable by indictment under the following laws of this state:

- (i) Article 2 of Chapter 13 of this title, relating to controlled substances;
- (ii) Article 3 of Chapter 13 of this title, known as the "Dangerous Drugs Act";
- (iii) Subsection (j) of Code Section 16-13-30, relating to marijuana;
- (iv) Article 1 of Chapter 5 of this title, relating to homicide;
- (v) Article 2 of Chapter 5 of this title, relating to bodily injury and related offenses;
- (vi) Articles 3 and 4 of Chapter 7 of this title, relating to arson and destructive devices, respectively;
- (vii) Code Section 16-7-1, relating to burglary, or Code Section 16-7-2, relating to smash and grab burglary;
- (viii) Code Section 16-9-1, relating to forgery in any degree;
- (ix) Article 1 of Chapter 8 of this title, relating to theft;
- (x) Article 2 of Chapter 8 of this title, relating to robbery;
- (xi) Code Sections 16-6-9 through 16-6-12 and 16-6-14, relating to prostitution and pandering;
- (xii) Code Section 16-12-80, relating to distributing obscene materials;
- (xiii) Code Section 16-10-2, relating to bribery;
- (xiv) Code Section 16-10-93, relating to influencing witnesses;
- (xv) Article 4 of Chapter 10 of this title and Code Sections 16-10-20, 16-10-20.1, 16-10-23, and 16-10-91, relating to perjury and other falsifications;

- (xvi) Code Section 16-10-94, relating to tampering with evidence;
- (xvii) Code Section 16-12-22, relating to commercial gambling;
- (xviii) Code Section 3-3-27, relating to distilling or making liquors;
- (xix) Part 2 of Article 4 of Chapter 11 of this title, known as the “Georgia Firearms and Weapons Act”;
- (xx) Code Section 16-8-60, relating to unauthorized transfers and reproductions of recorded material;
- (xxi) Chapter 5 of Title 10, relating to violations of the “Georgia Uniform Securities Act of 2008”;
- (xxii) Code Section 3-3-27, relating to the unlawful distillation, manufacture, and transportation of alcoholic beverages;
- (xxiii) Code Sections 16-9-31, 16-9-32, 16-9-33, and 16-9-34, relating to the unlawful use of financial transaction cards;
- (xxiv) Code Section 40-3-90, relating to certain felonies involving certificates of title, security interest, or liens concerning motor vehicles;
- (xxv) Code Section 40-4-21, relating to removal or falsification of identification numbers;
- (xxvi) Code Section 40-4-22, relating to possession of motor vehicle parts from which the identification has been removed;
- (xxvii) Code Section 16-9-70, relating to use of an article with an altered identification mark;
- (xxviii) Article 6 of Chapter 9 of this title, known as the “Georgia Computer Systems Protection Act”;
- (xxix) Any conduct defined as “racketeering activity” under 18 U.S.C. Section 1961 (1)(A), (B), (C), and (D);
- (xxx) Article 3 of Chapter 5 of this title, relating to kidnapping, false imprisonment, and related offenses, except for Code Section 16-5-44, relating to aircraft hijacking;
- (xxxi) Code Section 16-11-37, relating to terroristic threats and acts;
- (xxxii) Code Section 16-5-44.1, relating to motor vehicle hijacking;
- (xxxiii) Code Section 16-10-32, relating to tampering with witnesses, victims, or informants;

(xxxiv) Code Section 16-10-97, relating to intimidation of grand or trial juror or court officer;

(xxxv) Article 11 of Chapter 1 of Title 7 and Sections 5311 through 5330 of Title 31 of the United States Code relating to records and reports of currency transactions;

(xxxvi) Article 8 of Chapter 9 of this title, relating to identity fraud, and Section 1028 of Title 18 of the United States Code, relating to fraudulent identification documents and information;

(xxxvii) Code Section 33-1-9, relating to insurance fraud;

(xxxviii) Code Section 16-17-2, relating to payday loans;

(xxxix) Code Section 16-9-101, relating to deceptive commercial e-mail;

(xl) Code Section 16-8-102, relating to residential mortgage fraud; or

(xli) Code Section 16-5-5, relating to assisted suicide.

(B) "Racketeering activity" shall also mean any act or threat involving murder, kidnapping, gambling, arson, robbery, theft, receipt of stolen property, bribery, extortion, obstruction of justice, dealing in narcotic or dangerous drugs, or dealing in securities which is chargeable under the laws of the United States or any of the several states and which is punishable by imprisonment for more than one year.

(10) "Real property" means any real property situated in this state or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(11) "RICO lien notice" means the notice described in Code Section 16-14-13.

(12)(A) "Trustee" means either of the following:

(i) Any person who holds legal or record title to real property for which any other person has a beneficial interest; or

(ii) Any successor trustee or trustees to any of the foregoing persons.

(B) "Trustee" does not include the following:

(i) Any person appointed or acting as a guardian or conservator under Title 29, relating to guardian and ward, or personal representative under former Chapter 6 of Title 53 as such existed on December 31, 1997, relating to the administration of estates, if applicable, or Chapter 6 of Title 53 and other provisions in

Chapter 1 through 11 of Title 53, the “Revised Probate Code of 1998,” relating to the administration of estates; or

(ii) Any person appointed or acting as a trustee of any testamentary trust or as trustee of any indenture of trust under which any bonds are or are to be issued. (Code 1933, § 26-3402, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 1982, p. 1385, §§ 2, 8; Ga. L. 1983, p. 3, § 13; Ga. L. 1984, p. 22, § 16; Ga. L. 1989, p. 14, § 16; Ga. L. 1990, p. 8, § 16; Ga. L. 1994, p. 1625, § 4; Ga. L. 1996, p. 416, § 8; Ga. L. 1998, p. 128, § 16, Ga. L. 1998, p. 270, § 7; Ga. L. 1999, p. 81, § 16; Ga. L. 2001, p. 858, § 1; Ga. L. 2002, p. 551, § 3; Ga. L. 2002, p. 1284, § 3; Ga. L. 2003, p. 387, § 1; Ga. L. 2004, p. 60, § 2; Ga. L. 2004, p. 161, § 4; Ga. L. 2005, p. 199, § 5/SB 62; Ga. L. 2005, p. 848, § 3/SB 100; Ga. L. 2006, p. 69, § 2/HB 804; Ga. L. 2008, p. 381, § 9/SB 358; Ga. L. 2010, p. 1147, § 8/HB 1104; Ga. L. 2011, p. 59, § 1-64/HB 415; Ga. L. 2011, p. 752, § 16/HB 142; Ga. L. 2012, p. 90, § 2/HB 997; Ga. L. 2012, p. 637, § 2/HB 1114; Ga. L. 2012, p. 899, § 8-6/HB 1176.)

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, inserted “16-10-20.1,” in the middle of division (9)(A)(xv). The second 2012 amendment, effective May 1, 2012, deleted “or” at the end of division (9)(A)(xxxix); substituted “; or” for the period at the end of division (9)(A)(xl); and added division (9)(A)(xli). See editor’s note for applicability. The third 2012 amendment, effective July 1, 2012, substituted “any degree” for “the first degree” in division (9)(A)(viii). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 637, § 4/HB 1114, not codified by the General Assembly, provides that: “This Act shall not apply to any offense committed before the effective date of this Act.” This Act became effective May 1, 2012.

Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act.”

Law reviews. — For article, “Crimes and Offenses,” see 27 Ga. St. U. L. Rev. 209 (2011).

JUDICIAL DECISIONS

Federal jurisdiction.

Under the look-through rule, a hypothetical coercive claim was the basis for federal jurisdiction over petitioner bank’s Federal Arbitration Act petition, but petitioner payday loan companies’ arbitration petition was precluded by a related underlying state court judgment holding the

companies in contempt and, striking the companies’ arbitration defenses under O.C.G.A. § 9-11-37(b)(2) to respondent borrower’s suit alleging violations of Georgia’s usury statute, O.C.G.A. § 7-4-1 et seq.; Georgia’s Industrial Loan Act, O.C.G.A. § 7-3-1 et seq.; and Georgia’s Racketeer Influenced and Corrupt Orga-

nizations statute, O.C.G.A. § 16-14-1 et seq. Cmty. State Bank v. Strong, 651 F.3d 1241 (11th Cir. 2011).

Predicate acts under RICO not shown.

Trial court did not err in granting a seller summary judgment on purchasers' RICO claim based on mail fraud because any injury was not proximately caused by the alleged misrepresentations of the seller but by the purchasers' decision to go forward with the purchase despite knowledge of the facts as to which the purchasers were supposedly misled; multiple transactions arising out of a pattern of racketeering activity were not alleged,

only the sale of a single townhome unit to the purchasers. Pollman v. Swan, 314 Ga. App. 5, 723 S.E.2d 290 (2011).

Civil forfeiture action. — Trial court did not err in issuing interlocutory injunctions and continuing receiverships over store property seized pursuant to O.C.G.A. § 16-14-7 based on alleged video gambling activity in violation of O.C.G.A. § 16-12-22 and racketeering activity under O.C.G.A. § 16-14-3(8) and (9). Remand was required, however, for consideration of whether the forfeitures were excessive fines in violation of U.S. Const., amend. VIII. Patel v. State, 289 Ga. 479, 713 S.E.2d 381 (2011).

16-14-6. Available civil remedies.

Law reviews. — For article, "Overcoming Under-Compensation and Under-Deterrence in Intentional Tort Cases: Are

Statutory Multiple Damages the Best Remedy?", see 62 Mercer L. Rev. 449 (2011).

16-14-7. Forfeiture proceedings.

JUDICIAL DECISIONS

Temporary injunction.

Trial court did not err in issuing interlocutory injunctions and continuing receiverships over store property seized pursuant to O.C.G.A. § 16-14-7 based on alleged video gambling activity in violation of O.C.G.A. § 16-12-22 and racketeering

activity under O.C.G.A. § 16-14-3(8) and (9). Remand was required, however, for consideration of whether the forfeitures were excessive fines in violation of U.S. Const., amend. VIII. Patel v. State, 289 Ga. 479, 713 S.E.2d 381 (2011).

CHAPTER 15

STREET GANG TERRORISM AND PREVENTION

16-15-3. Definitions.

JUDICIAL DECISIONS

Gang activity evidence insufficient. — State failed to establish that a "criminal street gang" was involved in a battery for purposes of O.C.G.A. § 16-15-4(a). The investigating officer's testimony merely established that the juveniles were mem-

bers of gangs, not the gangs' activities, and therefore was insufficient to show that the gangs were involved in criminal gang activity. In the Interest of A. D., 311 Ga. App. 384, 715 S.E.2d 787 (2011).

16-15-4. Participation in criminal gang activity prohibited.

JUDICIAL DECISIONS

Evidence insufficient for conviction.

State failed to establish that a “criminal street gang” was involved in a battery for purposes of O.C.G.A. § 16-15-4(a). The investigating officer’s testimony merely established that the juveniles were members of gangs, not the gangs’ activities, and therefore was insufficient to show that the gangs were involved in criminal gang activity. *In the Interest of A. D.*, 311 Ga. App. 384, 715 S.E.2d 787 (2011).

Evidence of gang activity.

Gang-related evidence was admissible because the defendants were charged with engaging in criminal street gang activity under O.C.G.A. § 16-15-4; moreover, even though the statements of gang activity placed the defendants’ character in issue, the statements were admissible as res gestae of the crimes of gang activity and aggravated assault and battery. *Morey v. State*, 312 Ga. App. 678, 719 S.E.2d 504 (2011).

CHAPTER 16

FORFEITURE OF PROPERTY USED IN BURGLARY OR ARMED ROBBERY

Sec.

16-16-1. Definitions.

Sec.

16-16-2. Forfeiture.

16-16-1. Definitions.

As used in this chapter, the term:

- (1) “Armed robbery” means the offense defined in subsection (a) of Code Section 16-8-41.
- (2) “Burglary” means the offense defined in Code Section 16-7-1 in any degree. (Code 1981, § 16-16-1, enacted by Ga. L. 1995, p. 1051, § 4; Ga. L. 2012, p. 899, § 8-7/HB 1176.)

The 2012 amendment, effective July 1, 2012, substituted “Code Section 16-7-1 in any degree” for “subsection (a) of Code Section 16-7-1” in paragraph (2). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after

that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act.”

16-16-2. Forfeiture.

(a) All motor vehicles, tools, and weapons which are used or intended for use in any manner in the commission of or to facilitate the commission of a burglary or armed robbery shall be subject to forfeiture under this chapter, but:

(1) No motor vehicle used by any person as a common carrier in the transaction of business as a common carrier shall be subject to forfeiture under this Code section unless it appears that the owner or other person in charge of the motor vehicle is a consenting party or privy to the commission of a burglary or armed robbery;

(2) No motor vehicle shall be subject to forfeiture under this Code section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent, and any co-owner of a motor vehicle without knowledge of or consent to the act or omission shall be protected to the extent of the interest of such co-owner; and

(3) A forfeiture of a motor vehicle encumbered by a bona fide security interest shall be subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission.

Notwithstanding any provisions of this Code section to the contrary, any firearm forfeited under this chapter shall be disposed of in accordance with the provisions of Code Section 17-5-52.

(b) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state or any political subdivision thereof who has the power to make arrests upon process issued by any court having jurisdiction over the property. Seizure without process or warrant may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter; or

(3) If probable cause exists that the vehicle, tool, or weapon is subject to seizure.

(c) Property taken or detained under this Code section shall not be subject to replevin but is deemed to be in the custody of the superior court wherein the seizure was made or in custody of the superior court where it can be proven that the burglary or armed robbery was committed, subject only to the orders and decrees of the court having

jurisdiction over the forfeiture proceedings. When property is seized under this chapter, law enforcement officers seizing such property shall:

(1) Place the property under seal;

(2) Remove the property to a place designated by the judge of the superior court having jurisdiction over the forfeiture as set out in this subsection; or

(3) Deliver such property to the sheriff or police chief of the county in which the seizure occurred, and the sheriff or police chief shall take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) When property is seized under this chapter, the sheriff or law enforcement officer seizing the same shall report the fact of seizure, within 20 days thereof, to the district attorney of the judicial circuit having jurisdiction in the county where the seizure was made. Within 60 days from the date he or she receives notice of the seizure, the district attorney of the judicial circuit shall cause to be filed in the superior court of the county in which the property is seized or detained an in rem complaint for forfeiture of such property as provided for in this Code section. The proceedings shall be brought in the name of the state by the district attorney of the circuit in which the property was seized, and the complaint shall be verified by a duly authorized agent of the state in a manner required by the law of this state. The complaint shall describe the property, state its location, state its present custodian, state the name of the owner, if known to the duly authorized agent of the state, allege the essential elements of the violation upon which the forfeiture is based, and shall conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such a complaint, the court shall promptly cause process to issue to the present custodian in possession of the property described in the complaint, commanding him or her to seize the property described in the complaint and to hold that property for further order of the court. A copy of the complaint shall be served on the owner or lessee, if known. A copy of the complaint shall also be served upon any person having a duly recorded security interest in or lien upon that property. If the owner or lessee is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself so as to avoid service, notice of the proceedings shall be published once a week for two weeks in the newspaper in which the sheriff's advertisements are published. Such publication shall be deemed notice to any and all persons having an interest in or right affected by such proceeding and from any sale of the property resulting therefrom but shall not constitute notice to any person having a duly recorded security interest in or lien upon such property and required to be served under this Code section unless that person is unknown or resides out of the state or

departs the state or cannot after due diligence be found within the state or conceals himself or herself to avoid service. An owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. Any such answer shall be filed within 30 days after the service of the summons and complaint. Where service is made by publication and personal service has not been made, an owner or interest holder shall file an answer within 30 days of the date of final publication. An answer must be verified by the owner or interest holder under penalty of perjury. In addition to complying with the general rules applicable to an answer in civil actions, the answer must set forth:

- (1) The caption of the proceedings as set forth in the complaint and the name of the claimant;
- (2) The address at which the claimant will accept mail;
- (3) The nature and extent of the claimant's interest in the property;
- (4) The date, identity of transferor, and circumstances of the claimant's acquisition of the interest in the property;
- (5) The specific provision of this Code section relied on in asserting that the property is not subject to forfeiture;
- (6) All essential facts supporting each assertion; and
- (7) The precise relief sought.

If at the expiration of the period set forth in this subsection no answer has been filed, the court shall order the disposition of the seized property as provided for in this Code section. If an answer is filed, a hearing must be held within 60 days after service of the complaint unless continued for good cause and must be held by the court without a jury. If the court determines that a claimant defending the complaint knew or by the exercise of ordinary care should have known that the property was to be used for an unlawful purpose subjecting it to forfeiture under this chapter, the court shall order the disposition of the seized property as provided in this Code section and that claimant shall have no claim upon the property or proceeds from the sale thereof.

(e)(1) When property is forfeited under this chapter, the judge of the superior court in the county where the seizure was made or in the county in which it can be proven that the burglary or armed robbery was committed may dispose of the property by issuing an order to:

- (A) Retain it for official use by any agency of this state or any political subdivision thereof;
- (B) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for

payment of all proper expenses of the proceedings for forfeiture and sale, including but not limited to the expenses of seizure, maintenance of custody, advertising, and court costs; or

(C) Require the sheriff or police chief of the county in which the seizure occurred to take custody of the property and remove it for disposition in accordance with law.

(2)(A) Money, currency, or proceeds which are realized from the sale or disposition of forfeited property shall after satisfaction of the interest of secured parties and after payment of all costs vest in the local political subdivision whose law enforcement officers seized it. If the property was seized by a municipal law enforcement agency then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in that municipality. If the property was seized by a county law enforcement agency, then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in that county. If the property was seized by joint action of a county law enforcement agency and a municipal law enforcement agency, then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in that county and that municipality and shall be divided equally between the county and municipality. If the property was seized by a state law enforcement agency, then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in the county where the condemnation proceedings are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this subsection for payment of all costs, the local government in which the money, currency, or proceeds realized from the forfeited property vests shall expend or use such funds or proceeds received for any official law enforcement purpose except for the payment of salaries or rewards to law enforcement personnel, at the discretion of the chief officer of the local law enforcement agency, or to fund victim-witness assistance programs. Such property shall not be used to supplant any other local, state, or federal funds appropriated for staff or operations.

(B) Any local law enforcement agency receiving property under this subsection shall submit an annual report to the local governing authority. The report shall be submitted with the agency's budget request and shall itemize the property received during the fiscal year and the utilization made thereof. (Code 1981, § 16-16-2, enacted by Ga. L. 1995, p. 1051, § 4; Ga. L. 2012, p. 1285, § 1/SB 350.)

The 2012 amendment, effective May 3, 2012, substituted "shall be" for "is" throughout subsection (a); substituted "shall be" for "are" in the introductory

paragraph of subsection (a); and added the undesignated paragraph following paragraph (a)(3).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2012, “or” was deleted preceding “nor” in paragraph (a)(3).

